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1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

3
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7 SENATOR HENRY WELLS

8 SENATOR NICHOLAS FITZIS

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10 CLIFF BEEG, Executive Director ROOM 113

11 PAT WISS, Committee SACRAMENTO, CALIFORNIA

12 RICK BOLLENS, Consultant on Bill Referrals

13 NANCY MICHEL, Consultant on Governor's Appointments

14 ALSO PRESENT

15 PHILLIP G. BAKER, THURSDAY, JULY 5, 1990

16 Board of Governors

17 California Community College 2:18 P.M.

18 JAMES H. GRAY, Member

19 Trustee of the California State University

20 DR. PATRICK NICHOLSON, President

21 California Faculty Association

22 GLORIA S. HUX, Member

23 Trustee of the California State University

24 DR. LELAND YEE, Commissioner

25 San Francisco Board of Education

26 Reported by: Assistant Manager

27 California Teachers Association

28 BENJAMIN LOPEZ, District Advocate

California Rural Legal Assistance

Evelyn J. Mizak, Analyst

Shorthand Reporter

ROBERT GURIAN, Legislative Advocate

California Faculty Association

APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

PHILLIP G.. BARDOS, Member
Board of Governors
California Community Colleges

JAMES H. GRAY, Member
Trustees of the California State University

DR. PATRICK NICHELSON, President
California Faculty Association

GLORIA S. HOM, Member
Trustees of the California State University

DR. LELAND YEE, Commissioner
San Francisco Board of Education

ROCKY BARILLA, Assistant Manager
California Teachers Association

BENJAMIN LOPEZ, Directing Advocate
California Rural Legal Assistance

DAVID LOPEZ, Policy Analyst
MALDEF

ROBERT GURIAN, Legislative Advocate
California Faculty Association

APPEARANCES (CONTINUED)

1
2 SENATOR ALFRED ALQUIST

3 TONY CASTILLO
4 California Labor Federation, AFL-CIO

5 DAVID S. L. LEE, Member
6 Board of Governors
California Community Colleges

7 ANTHONY M. VITTI, Member
8 Trustees of the California State University

9 BRUCE JANIGIAN, Chair
Agricultural Labor Relations Board

10 LAWRENCE ALDERETE, Regional Director
Agricultural Labor Relations Board

11 DELORES HUERTA, First Vice President
12 United Farm Workers

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CHAIRMAN ROBERTI: I'm going to go to Governor's Appointees, then we'll take up legislation, and then we'll take up rule waivers.

Mr. Arnall was the first, but I understand he cannot make it.

MS. MICHEL: We've let his office know that he has options of dates. We haven't heard back from him. We have offered him dates that are convenient to him.

CHAIRMAN ROBERTI: The next appointment is Mr. Phillip G. Bardos, Member of the Board of Governors of the California Community Colleges.

It's good to see you.

MR. BARDOS: Mr. Chairman and Members, my name is Phillip Bardos.

CHAIRMAN ROBERTI: We'll ask you why you feel you're qualified to assume this position. I have a hunch I know the answer.

MR. BARDOS: Thank you, Senator.

As you know, I was an elected member of the Los Angeles School Board from 1971 to 1979, and as such, I've had a continuing interest in education, particularly for young people, of all ages really.

So, I welcome the opportunity to serve again.

CHAIRMAN ROBERTI: Very good.

Are there any questions of Mr. Bardos? Is there any

1
2 opposition in the audience?

3 SENATOR CRAVEN: Move Mr. Bardos' nomination to the
4 Floor.

5 CHAIRMAN ROBERTI: Senator Craven moves Phillip
6 Bardos' nomination as Member of the Board of Governors of the
7 California Community Colleges.

8 Senator Petris has a question.

9 SENATOR PETRIS: What's the length of the term?

10 MR. BARDOS: Six years, sir.

11 SENATOR PETRIS: Starting when?

12 MR. BARDOS: May, or upon my confirmation, I guess.

13 CHAIRMAN ROBERTI: I think it's on the date of your
14 appointment, so it was --

15 MS. MICHEL: April of '90.

16 He was asking when the term ended.

17 CHAIRMAN ROBERTI: He was appointed in April of '90.

18 SENATOR PETRIS: There's no opposition?

19 SENATOR CRAVEN: No.

20 CHAIRMAN ROBERTI: I don't know of any opposition.

21 I might add that Mr. Bardos served in exemplary
22 fashion in Los Angeles.

23 MS. MICHEL: Other than the California State
24 Employees Association.

25 CHAIRMAN ROBERTI: Theirs is a general opposition now
26 to all appointees of the Governor.

27 SENATOR PETRIS: Well, I'll raise the same question I
28 raised at prior meetings, although it's a little different here

1 at the Community College.

2 First of all, we haven't heard any opposition from
3 faculty or students, or anybody else, so that's a good sign.

4 I've been raising the question where the terms go
5 into the future. I don't think it would apply so much here, but
6 in some of the appointments, there have been very dramatic
7 philosophical differences between the appointee and me.

8 Traditionally, I've not opposed people on account of
9 their philosophy. I think the Governor's entitled to appoint
10 persons who carry out his general program.

11 But you ain't going to be serving under that
12 Governor. You're going to be serving under some other Governor.

13 So, it raises the question: whose program is going
14 to be carried out here? Who's going to win next time? Should
15 you be there for another five or six years?

16 I don't know that the Community College gets into
17 that category. That's why I hesitate a little to even raise the
18 question.

19 I raise it now because we've got a flock of
20 appointments here today, and I'm serving notice on all of you
21 good folks out there that I'll probably raise it with each one.

22 The only time that philosophy does have a bearing, it
23 seems to me, is when it's projected into the future by depriving
24 the new Governor an opportunity to put someone to carry his or
25 her program. See what I mean?

26 But all the reports we've had are fine from that
27 standpoint. There's no problem.

1 Thank you.

2 MR. BARDOS: Thank you, sir.

3 CHAIRMAN ROBERTI: Are there any other questions?

4 Senator Craven has moved. Secretary will call the
5 roll.

6 SECRETARY WEBB: Senator Beverly.

7 SENATOR BEVERLY: Aye.

8 SECRETARY WEBB: Senator Mello.

9 SENATOR MELLO: Aye.

10 SECRETARY WEBB: Senator Petris.

11 SENATOR PETRIS: Aye.

12 SECRETARY WEBB: Senator Craven.

13 SENATOR CRAVEN: Aye.

14 SECRETARY WEBB: Senator Roberti.

15 CHAIRMAN ROBERTI: Aye.

16 The vote is five to zero; confirmation is recommended
17 to the Floor.

18 Congratulations.

19 MR. BARDOS: Thank you very much.

20 CHAIRMAN ROBERTI: The next appointment is Mr. James
21 H. Gray, Member of the Board of Trustees of the California State
22 University.

23 MR. GRAY: Mr. Chairman, Members, my name is James H.
24 Gray.

25 CHAIRMAN ROBERTI: We will ask you what we ask all
26 the appointees, and that's why you feel you're qualified to
27 assume this position.
28

1
2 MR. GRAY: Well, in 1971, I was elected to the Long
3 Beach Unified School District Board of Trustees and also the
4 Long Beach Community College Board of Trustees. I served for
5 four years.

6 In fact, I served with Phil Bardos when he was in Los
7 Angeles. I was surprised to see him here today. Got to renew
8 old acquaintances.

9 I also served on the Technical Education and
10 Evaluation Commission of the State of California for a period of
11 about three, four years, then was on the Educational Management
12 Evaluation Commission during Wilson Riles' tenure as
13 Superintendent. During that period of time, of course, I was
14 heavily involved with a lot of educational issues.

15 I happen to be a graduate of the California State
16 University system; I'm from Cal. State Long Beach. And I have a
17 daughter that graduated from there, and I feel very strongly
18 about the need to have a State university system that provides
19 for young people in this state an opportunity to be able to
20 perform in the real world. And I think California State
21 University is probably one of the greatest opportunities to help
22 provide that opportunity.

23 CHAIRMAN ROBERTI: Is there anyone to testify here
24 either in support or opposition?

25 SENATOR CRAVEN: Move Mr. Gray.

26 CHAIRMAN ROBERTI: Senator Craven moves Mr. Gray's
27 confirmation be recommended to the Floor.

28 Please come forward.

1 DR. NICHELSON: My name is Pat Nichelson, President
2 of the California Faculty Association.
3

4 I'm certainly not here in opposition. I'd like to
5 make a couple of comments that would have applied also to
6 Mr. Arnall were he here today and do apply to Mr. Gray and
7 Ms. Hom, because these three, coincidentally, serve on the -- or
8 will be serving on the Finance Committee of the Board of
9 Trustees.

10 As you know, there have been many troubles --

11 CHAIRMAN ROBERTI: How do people get put on the
12 Finance Committee? They're appointed by the Chairman?

13 DR. NICHELSON: They're appointed by a committee of
14 committees.

15 CHAIRMAN ROBERTI: Like the Rules Committee.

16 DR. NICHELSON: Yes.

17 CHAIRMAN ROBERTI: Very good, that's fine.

18 DR. NICHELSON: Those appointments have just come in.
19 They're freshmen.

20 And as you know, the University has gone through a
21 series of troubles in recent times. And we believe, the Faculty
22 Union believes that at the core of the troubles was a lack of
23 communication and consultation up and down through the system.
24 And as you also know, probably the root of the opposition
25 between the employees' groups and the administration has been
26 over financial consultation and participation.

27 We simply -- we've handed in some written comments,
28 and we simply would like to underscore the fact that we hope

1 that Mr. Gray and his colleagues on the Finance Committee,
2 especially in this tumultuous time with the worst budget in
3 anybody's memory coming down upon us, will make every effort to
4 see to it that administration work with the faculty and other
5 employee groups in both planning the budget as well as
6 distributing the scarce resources.
7

8 I happen to be hopeful about this. There's a new
9 spirit in the system. Administration is encouraging more
10 participation on the part of the groups, and I really hope that
11 Mr. Gray and his colleagues will reward good behavior on the
12 part of the new Chancellor and administration in this regard.
13 Not simply empty consultation after the fact, but true
14 participation in the budget area.

15 Those are my comments.

16 CHAIRMAN ROBERTI: Thank you very much.

17 Mr. Gray, would you like to respond?

18 MR. GRAY: Yes.

19 I think one of the reasons I was put on the Finance
20 Committee is, I'm a past President of the California Bankers'
21 Association. I'm Chairman and Chief Executive Officer of Harbor
22 Bank in Long Beach.

23 I share of the concerns that the faculty has voiced
24 here today.

25 The only way to solve difficult financial problems is
26 to have the input of all the affected parties. And I certainly
27 would be committed, as I have been, whether it's been my earlier
28 educational side or the Harbor Commission for the Port of Long

1 Beach, to want to work to form a consensus, because when
2 difficult decisions have to be made, if those are going to be
3 good decisions, they have to be made in concert with all of the
4 affected parties.

5 CHAIRMAN ROBERTI: Thank you.

6 Senator Beverly.

7 SENATOR BEVERLY: I'd just like to state that I'm
8 well acquainted with Mr. Gray and his long record of public and
9 community service in Long Beach.

10 I'm very pleased to support his nomination.

11 CHAIRMAN ROBERTI: Thank you, Senator.

12 Senator Petris.

13 DR. NICHELSON: I'd like to add, since I'm a second
14 generation native of Long Beach, he's probably pretty good
15 material.

16 SENATOR PETRIS: I don't know. Deukmejian comes from
17 there, too, and we're having problems right now.

18 DR. NICHELSON: No comment.

19 MR. GRAY: But I was born there.

20 SENATOR PETRIS: Oh, he wasn't born there. He's a
21 New Yorker.

22 I wish you hadn't mentioned the banks as a reason why
23 you're on the Finance Committee. You know, I've been hearing
24 for the hundred years I've been in public office --

25 CHAIRMAN ROBERTI: He didn't say S&Ls, Senator.

26 SENATOR PETRIS: No, but prior to the S&Ls, the banks
27 had some problems, too. And all I heard in those hundred years
28

1 was: you ought to run the government the way private business
2 is run.

3
4 So, now I'm asking: like the S&Ls; like Chrysler
5 when they had their big problems; like some of the banks that
6 went under. There've been more banks that have gone under in
7 the last ten years than the prior 20 or 30.

8 So, I don't know if that's a good recommendation or
9 not. It's no reflection on your particular bank or your role in
10 it. It may be a shining, outstanding exception.

11 MR. GRAY: We're still in business.

12 SENATOR PETRIS: Well, that's a victory in this day
13 and age.

14 I am concerned about employee input, and you've
15 covered that.

16 What is your best estimate of the budget gap for the
17 Cal. State system in the coming fiscal year? I mean, we're
18 wrestling over that now, and you're on the outside looking in,
19 but I imagine you've been getting some information on it.

20 MR. GRAY: We had an up to date or a daily meeting of
21 the current financial situation using a number of some 200-plus
22 million in shortfall and looking at different ways of trying to
23 meet that.

24 I think that number could grow, based on the amount
25 of differentials still in the State budget. Hopefully, it
26 won't, because I wouldn't want to lose sight of the fact that in
27 using a number of that sort, no matter how you go about trying
28 to balance that, we don't lose sight of the fact that young

1 people that are committed to come to the University in the fall
2 would not have programs and not have proper programs.
3

4 So, as those cuts come about, I'm sorry I can't be
5 specific on where I would want to offer my input to how we meet
6 that shortfall until we know how big the shortfall is, but I
7 think that the programs for the young person going to the
8 University is the wrong place to cut it.

9 I do think, though, that with numbers of this size,
10 gaps of this size, that the interface with all of the affected
11 groups becomes even more important because it's not going to be
12 comfortable for anybody. And I think it's vitally important
13 that the input be a part of the solution, however difficult the
14 solution may be.

15 SENATOR PETRIS: Well, let's assume it's 200 million,
16 and that's established.

17 To you knowledge, are there a lot of frills in that
18 200 that we can easily chop off?

19 MR. GRAY: Well, it would presumptuous, having only
20 been appointed in late March and never having gotten through the
21 budget the first time, to say yes or no, but it would be hard to
22 believe that with a budget of the total size, there aren't areas
23 that, while maybe uncomfortable, are potential savings. They're
24 going to have to be done, and the important thing is that
25 they're done in the least effective way to affect the education
26 of the young people.

27 SENATOR PETRIS: Well, if you cut grants, President
28 Bush said one of the reasons he changed his mind on taxes is

1 that it would mean slashing grants to students going to the
2 university system in our country. He only singled out three
3 items; that was one of them.
4

5 Now, we've seen a tremendous shift in the last eight
6 years nationally in the proportion of federal aid to grants as
7 opposed to loans. They've shifted from grants, scholarships, to
8 more and more loans.

9 As a consequence, President Gardener of U.C. tells us
10 we have a tremendous shortage of Ph.D.s. Bright students finish
11 their four years with a big mortgage on their backs. They've
12 got a big, fat loan, and some private company comes along and
13 dangles a very lucrative offer in front of them and says, "Hey,
14 come and work for us. You'll make a lot of money." And the
15 scholars are saying, "Hey, you're bright. We need you. Stay on
16 and do research or teach, and we think you ought to follow your
17 original program of getting a Ph.D." They're saying, "I can't
18 hack it. It's just asking for another three or four years of
19 borrowing."

20 Now, wouldn't you support a tax increase to make sure
21 that programs like that stay in, as opposed to chopping them?

22 MR. GRAY: I would -- I'm going to couch this by
23 saying if that is the only way to encourage those young people
24 at the University of California system to be able to go ahead,
25 if that is the only way, then the answer would be yes, if there
26 was no other opportunity.

27 I don't think that the CSU system ought to be
28 expanding the doctorate programs to start with. I think there's

1 a different mission for the California State University than
2 there is for the University of California. A very different
3 mission in a lot of ways.

4 I think, from the standpoint of a young person coming
5 into --

6 SENATOR PETRIS: Excuse me.

7 It would apply to Cal. State, too. I mean, they go
8 through school. They borrow -- a large percentage of the
9 students borrow money. And you have to go through the four
10 years before you get to the M.A. or Ph.D., and a lot of them go
11 on from your system to get their Ph.D.s, but they're being
12 inhibited also.

13 So, I didn't mean to confine it to U.C. I mean just
14 looking at the total education picture.

15 MR. GRAY: Well, there's no question of the fact that
16 the ability to finance higher education -- and I'm talking about
17 on the graduate and the doctorate level -- has been infringed
18 not only on the cutting of grants, but in the very difficult
19 situation of collecting back the loans that has been used as a
20 scapegoat for providing funding for that.

21 Quite candidly, it's probably cheaper to give a grant
22 than to give a loan that isn't collected back, and then spend a
23 lot of money trying to collect it. Maybe that should be a part
24 of that whole equation.

25 But there is going to be, I think, a crying need for
26 the doctorate program to have funding.

27 I guess my number one priority, if I am confirmed
28

1 into this position, is to make sure that by the time that young
2 person is ready, and of course, they're not quite so young any
3 more, but by the time they're ready for a doctorate program,
4 that they've developed the tools that, if they have the
5 opportunity to go ahead, that they're going to be well prepared
6 for it.

7
8 Having worked full-time and gone to school full-time
9 to get through Cal. State Long Beach, I can tell you there are
10 probably better ways to do it, but you learn probably as much
11 outside the classroom as you do in.

12 SENATOR PETRIS: Well, students I've talked to do
13 both. They work, and they borrow, and they get deeper into
14 debt. And it's a national picture.

15 We have a better program than most other states. We
16 don't just rely on the feds. We do a lot. We put in a lot of
17 money, but it isn't anywhere near what the need is.

18 Thank you.

19 CHAIRMAN ROBERTI: Thank you, Senator.

20 Senator Mello.

21 SENATOR MELLO: I certainly want to concur in what
22 Senator Petris said.

23 I have some pretty direct experience of that with my
24 son, who taught for seven years down at San Jose State as a
25 temporary teacher; one, I guess, that's more frequently called a
26 "freeway teacher". And then, not able to get a tenured
27 position, he's back at Berkeley now, spending three years for a
28 doctorate degree, which is necessary to hope to get a position

1 at the State University.

2
3 It's a tremendous burden on everybody to do that. I
4 don't expect you to solve that, but perhaps be a little bit more
5 compassionate.

6 My first question would be, I know your appointment
7 came on March 13th, and incidents surrounding the Chancellor,
8 and the six cars that were bought for \$2 under 100,000, plus the
9 increase in salaries, happened -- her resignation came forth
10 April 19th, so I don't know whether you had much time to be
11 appointed and participate at all in any of those events.

12 But I will ask you, were you at all in participation
13 with any of the events surrounding the Chancellor's purchase of
14 automobiles and/or the pay increase she gave to the staff at the
15 University?

16 MR. GRAY: No, I was not.

17 Actually, on the 13th, was the first of a two-day
18 meeting, the March meeting, of the Board of Trustees. I was
19 called late morning and asked if I would accept an appointment
20 if confirmed.

21 I was sworn in on the evening of the 13th and had a
22 commitment out of the city on the 14th, not knowing I was going
23 to be appointed to something on the 13th. So, I went to one
24 committee meeting that morning then had to leave on a plane.

25 So, I was not a part of it at all. My first full
26 meeting was a special meeting where the Chancellor tendered her
27 resignation.

28 SENATOR MELLO: Didn't the Regents, back in 1983,

1 pass a resolution declaring an open meeting policy for the
2 discussion of salaries?
3

4 MR. GRAY: I have no idea. I would assume so. In
5 1983 --

6 SENATOR MELLO: In 1983, the Trustees had approved a
7 similar adjustment in salaries under closed session. But
8 following public criticism, the Chancellor had agreed to conduct
9 subsequent salary adjustments in public session.

10 MR. GRAY: I have read all of that and as part of
11 background.

12 SENATOR MELLO: The main thrust of what I want, I'm
13 very interested in bilingual education. And the State
14 University is where we look for the greatest majority of our
15 teachers.

16 There's a shortage now in many areas, and certainly
17 bilingual education teachers, we're short 20,000 in the State of
18 California. We're recruiting teachers from Spain, and Latin
19 America, and South American countries.

20 It's just unbelievable that we don't have -- we do
21 have that rich resource right here in California. We're not
22 reaching out to our own citizens who have this qualification to
23 do that.

24 What I really want to know is, what is your
25 philosophy towards -- do you think there's a need for bilingual
26 education? Do you think you're committed to the program plus
27 the enhancement of ways we can produce more teachers out of our
28 State University system? Or whether or not you support the

1 philosophy of people like S. I. Hayakawa and others that think
2 we are and should be just an English only society and not
3 recognize the many nationalities and cultures that we have in
4 our state?

5 MR. GRAY: Well, I'm very interested in it. In fact,
6 last Tuesday morning, I met with the Superintendent of Schools
7 from Long Beach relative to a number of subjects, not the least
8 of which was bilingual education.

9 My daughter happens to be teaching in the Long Beach
10 School District at the present time. And one of the ways she
11 has to communicate with some of the new additions in the
12 classroom that she has, and this is the elementary level, is
13 because she happens to be an artist, and she can communicate
14 through pictures.

15 Long Beach has a huge Cambodian population, and yet
16 there's only three credentialed Cambodian-speaking teachers
17 licensed in the State of California at the present time, and
18 none of them are in Long Beach.

19 I don't think it's just the way of getting more
20 teachers through the system. Credentialing of those teachers
21 with special talents and needed talents has really got to be
22 looked at, because there are qualified people that can do a fine
23 job, but may not meet a rather stringent set of criteria at the
24 present time. And we have to make that system work, because
25 these young people keep getting older. And unless they get the
26 help at an early age, sometimes they get so far behind it's --

27 SENATOR MELLO: I go back to Senator Petris' point,
28

1
2 it's not only the Hispanic community. It's the Asian community
3 that has a need. It's a tremendous amount of different language
4 barriers that we have from even the Middle East and other
5 countries.

6 But a lot of these people are on the lower economic
7 levels and cannot afford the high cost of going to a university.
8 And unless we -- it seems funny that we have money to spend to
9 recruit teachers overseas, but we don't have money to help
10 teachers here locally.

11 I just hope that you'll provide some leadership in
12 this area that I think is needed. And especially -- your term
13 will go on until what, 1998?

14 MR. GRAY: I believe that's correct.

15 SENATOR MELLO: You'll span the term of two
16 governors.

17 So, like Senator Petris pointed out, your term will
18 be committed for a period of time whereby the next two elected
19 governors will be out of office at the time your term is up.

20 So all I'm saying is that I hope that you will be a
21 leader in the once proud university system we had in our state,
22 and still proud, I think, our University of California and our
23 State University as well. It's something that we just have to
24 build up. It's been neglected, I think, far too long.

25 MR. GRAY: If I could, back in the early '70s, there
26 was a group formed called the Big Five School Districts, which
27 were: Oakland, San Francisco, Los Angeles, San Diego, and Long
28 Beach. The Big Five was only because of the number of students.

1
2 One of the finest educators I ever knew, Mark Foster
3 from Oakland, Superintendent of Schools, that had a most
4 untimely and unsavory conclusion to a career that could have
5 showered many things, was one of the greatest advocates of
6 bilingual education and convinced me, in the early '70s, that's
7 the only way to be able to help young people at an early time in
8 their educational process, when they reach our system.

9 And that doesn't answer the State University, but I
10 am committed.

11 SENATOR MELLO: Thank you very much.

12 CHAIRMAN ROBERTI: Is there any opposition in the
13 audience to the motion, Senator Craven's motion? I do not see
14 any opposition.

15 The Secretary will call the roll.

16 SECRETARY WEBB: Senator Beverly.

17 SENATOR BEVERLY: Aye.

18 SECRETARY WEBB: Senator Mello.

19 SENATOR MELLO: Aye.

20 SECRETARY WEBB: Senator Petris.

21 SENATOR PETRIS: Aye.

22 SECRETARY WEBB: Senator Craven.

23 SENATOR CRAVEN: Aye.

24 SECRETARY WEBB: Senator Roberti.

25 CHAIRMAN ROBERTI: Aye.

26 The vote is five to zero; the confirmation is
27 recommended to the Floor.

28 Congratulations.

1 MR. GRAY: Thank you very much.

2 DR. NICHELSON: Senator, our comments on our
3 financial concerns would be the same for Trustee Hom, so I won't
4 repeat them.

5 CHAIRMAN ROBERTI: Very good. That will be noted in
6 the record.

7 The next appointee of the Governor is Ms. Gloria S.
8 Hom, Member of the Trustees of the California State University.

9 Ms. Hom, we'll ask you what we've asked all the
10 Governor's appointees, and that is why you feel you're qualified
11 to assume this position.

12 MS. HOM: Thank you.

13 I'm requesting your consideration to fill the
14 unexpired term of Dr. Dale Ride, a two-year term.

15 I wish to share with you my vision of the CSU system,
16 and why I feel I deserve to be on the Board.

17 My vision for the CSU system in the next 20 years is
18 one of extreme growth. Unless there's a change in the Master
19 Plan for Higher Education, California State Universities are
20 charged with accepting students who graduate in the top
21 one-third of their high school graduating class, and all
22 community college transfer students. Campuses will have unmet
23 demands.

24 To prepare for the growth, we must find new and
25 better ways to deliver instruction, yet be vigilant in
26 maintaining the quality and integrity of the system. In the
27 next decade, we must further explore cost effective innovations,
28

1 including: telecommunications, peer tutoring, and partnerships
2 with businesses and industries, greater resources and interest
3 in the training of more bilingual teachers.
4

5 In 1992, the State will need 100,000 new teachers. I
6 believe this is a challenge for the CSU system. Teacher
7 education should be a top priority and mission. We should be
8 recruiting our brightest and our best minority and majority
9 students to go into this important profession.

10 We must also provide teachers with appropriate
11 strategies for dealing with our multicultural society. We must
12 strive to retain our talented teachers and retrain and refresh
13 those who show signs of burnout.

14 We must also meet the needs of a multicultural state.
15 More outreach programs for our high-risk youth, encouraging them
16 to enroll in a State University, and providing them with quality
17 education. A support system must be in place to retain these
18 students.

19 The basis of economic opportunity lies in the
20 availability of education for all our students. To participate
21 in our educational system, immigrant children have special needs
22 which must be addressed if they are to cross the borders of
23 culture, language, and history. There must be a transitional
24 program assisting them, such as bilingual education for language
25 acquisition.

26 I believe that CSU is poised for greatness. It is
27 not at a crossroads and must identify its role more clearly.

28 As a Trustee, I am interested in helping the system

1 define that role and raising its self-esteem.

2 I believe a mission for CSU is to develop the best
3 undergraduate program possible, with a strong emphasis on
4 teaching and learning; a master's degree program relevant to
5 meeting the needs of California's workplace and providing a
6 comprehensive education without emulating the research component
7 of the University of California.

8 I'm excited about the future and hope to be part of
9 the process.

10 Well, why me, you may ask. Well, I've spent my
11 entire life involved in education. In fact, very few of my
12 years have been spent out of school. I have first-hand
13 knowledge and experience of the classroom, administration and
14 boardsmanship, both in private and public schools.

15 My board experience includes: five years on the
16 State Board of Education, years that were learning experiences
17 both in terms of personal growth and political awareness; the
18 Board of Trustees for Dominican College for the past four years,
19 during which I participated in the selection of two presidents.

20 During my 22 years of classroom and administrative
21 experience in the community college, I have served as the
22 President of the California Teachers Association, West Valley
23 Chapter, and have continuous membership for the past 23 years.
24 I belong to the Faculty Association of California Community
25 Colleges, and our union, the Association of Certificated
26 Employees.

27 I was fortunate to be one of the few faculties
28

1 selected to accredit four different colleges.

2 Additionally, I was Chairperson on the Community
3 College Chancellor's Office Retention Task Force and a member of
4 the San Jose State University Educational Equity Committee.
5 This year, I was elected to represent my fellow faculty members
6 as an academic senator.

7 I believe I can serve as a bridge for providing the
8 partnership with all levels of California educational
9 institutions. More than 70 percent of CSU's enrollment is the
10 direct result of community college education. We have to have
11 better communication and articulation for us to maximize our
12 educational opportunities for all our students.

13 And the end of this summer, I will be receiving a
14 doctorate in Education with a speciality in organization and
15 leadership. With my training as an economist and background in
16 political science, I understand compromises and consensus
17 politics. I know I can delineate the parameters as well as the
18 priorities of good government.

19 Education is the cornerstone of our democracy. It is
20 our legacy of freedom. Therefore, the level of excellence must
21 be protected to maintain a quality of life for all our citizens.

22 I'm fully armed with an academic background,
23 experience, and energy to do the job, and I look forward to
24 serving in this capacity for the next two years.

25 CHAIRMAN ROBERTI: Thank you, Ms. Hom.

26 I would like to also read in the record, I received a
27 letter from Senator Alquist:
28

1 "Mr. Chairman and Members,

2 "Gloria Hom is a distinguished
3 member of the Trustees of the
4 California State University. During
5 her tenure, she has contributed
6 greatly to the success of the
7 California State University system,
8 and I wholeheartedly recommend her
9 reappointment.
10

11 "Thank you for your
12 consideration of this matter."

13 From Senator Alquist.

14 Is there any support or opposition in the audience?
15 Please come forward.

16 DR. YEE: Mr. Chair, Senators, my name's Leland
17 Yee, and I am here as a member of the Board of Education of
18 San Francisco, also the President of the San Francisco Bay
19 Region of Asian-Pacific American Coalition, which is a civil
20 rights advocacy group.

21 My appearance before you is really not an easy one.
22 It's very difficult for me when I cannot support a woman, a
23 minority woman, a Chinese woman. In our communities, where
24 we have so few role models in government, we can ill afford
25 to squelch the opportunity and aspirations of anyone who's
26 qualified and competent.

27 However, after hours of heart-wrenching debate with
28 myself, I must stand firm in voicing my opposition to the

1 confirmation of Gloria Hom to the Board of Trustees of the
2 California State University system.

3 I'm against Gloria Hom, not the person, but her
4 perspectives and actions as they relate to bilingual
5 education. Her views are consistent with those who would
6 have English as the only medium of instruction in our
7 schools. Her positions are those which strip our children of
8 their language and culture.

9 Her nonsupport for the reauthorization bill for
10 bilingual education has brought havoc to the education of our
11 limited English proficient children. Her continued lack of
12 understanding of and importance for primary language
13 instruction leaves limited English proficient children at
14 risk for an inferior education in our public schools.

15 These past and present behaviors by Gloria Hom are
16 not good indications that her present and future behaviors on
17 the California State University Board of Trustees will be in
18 the best interests of the public school children in
19 California.

20 I do not expect Gloria Hom to do much to ensure
21 that the California State Universities, which prepare the
22 majority of California's teachers, will aggressively recruit
23 and train competent, well-qualified bilingual teachers. I do
24 not expect Gloria Hom to ensure that the teacher training
25 program in our State Universities will require that all
26 teachers will not only be sensitive, but knowledgeable about
27 the linguistic and cultural backgrounds of our students.
28

1
2 Senators, you have and will hear many good things
3 about Gloria Hom, and I don't deny that these things are
4 true. However, I hope that you, too, will stand firm and
5 examine not what she is saying now, but what she has done in
6 the past, and what she has failed to do to protect the
7 interests of all the school children in California.

8 What she has not done is to give all of our
9 children the equal opportunity and access to the quality
10 education program that is most desperately and deservedly
11 needed by them.

12 Thank you.

13 CHAIRMAN ROBERTI: Thank you, Dr. Yee.

14 SENATOR CRAVEN: May I ask a question of this
15 witness?

16 CHAIRMAN ROBERTI: Senator Craven.

17 SENATOR CRAVEN: In the body of your remarks, you
18 used the term "as wrecked havoc" upon the educational system.

19 Do you recall saying that?

20 DR. YEE: Yes, I recall.

21 SENATOR CRAVEN: Where did she unilaterally assume
22 such a powerful role as to do that, could you tell me?

23 DR. YEE: Well, I think that on the State Board of
24 Education, she had an opportunity to distinguish herself, to
25 demonstrate the leadership that I think all of us in the
26 field were looking for in terms of support a reauthorization
27 for bilingual education bill.

28 Because we don't have a bilingual education bill in

1 the field now, we have teachers, we have administrators, we
2 have individuals who don't sense that there is a strong
3 emphasis in California for bilingual education.
4

5 I have parents who have not stepped one foot in
6 their schools because whenever they pick up the telephone,
7 there is not somebody at the other end of the line in that
8 school who understands them.

9 In the classroom, we have teachers who, because
10 they don't feel that there is a strong emphasis in bilingual
11 education in California now, are no longer that aggressive,
12 no longer that interested in providing primary language
13 instruction. So, we have students now who are essentially
14 sinking, who are trying to understand what's going on and
15 just having a very difficult time.

16 I work in a program in San Jose where we look at
17 delinquent youths and so on, and time and time again, many of
18 these adolescents, Asian adolescents, they are saying that
19 "When we go to school, nobody understands us. We try to
20 speak in our language, but nobody understand us."

21 That is the sad state of affairs that we have right
22 now. Many, many of our school systems, where there is not
23 the primary language support that we most desperately need.

24 SENATOR CRAVEN: You made mention of your parents
25 calling on the phone to a school of some type, and the person
26 on the other end was unable to understand or comprehend what
27 your parent was saying.

28 I'm presuming they're speaking Chinese.

1 DR. YEE: Southeast Asian: Cambodian and Asians.

2 SENATOR CRAVEN: Do you attribute the lack of
3 understanding on the part of the person receiving the call to
4 Ms. Hom?

5 DR. YEE: I think that, again, that we in
6 education, we who are in leadership roles in education, need
7 to stand firm in regards to the importance of providing
8 bilingual services, bilingual personnel. And the direction
9 is always going to be coming from this body here or coming
10 from this city here in terms of having some legislation,
11 having something that's going to codify the importance of
12 bilingual education.

13 When that is not seen in the field, then the
14 message is: it is not that important. We don't need to
15 provide that; we don't need to seek out teachers who will
16 have that kind of skill; we don't need to look for
17 individuals who have that kind of skill.

18 SENATOR CRAVEN: Well, if you were present when she
19 made her opening remarks, she alluded at least two times to
20 the need and pressing necessity to have bilingual education,
21 which I thought was a rather prima facie indication of her
22 feeling for that in which you have an interest, and a
23 deserved interest.

24 DR. YEE: I listened very carefully, I think, to
25 her opening remarks and so on, and I think I come back to the
26 point I made in my presentation, which is that while she says
27 that now, there were opportunities in the past where she was
28

1 in a leadership role where she did not act on those kinds of
2 feelings, or that she did not demonstrate that kind of --

3 SENATOR CRAVEN: Well, would you feel that you and
4 I could hold a particular philosophy as to the efficacy of
5 bilingual education, but your approach to that end may be
6 different than my own, even though we have the same goal?
7

8 DR. YEE: I think that when I am talking about
9 bilingual education, I am talking about using a youngster's
10 primary language to access the development of that
11 youngster's content area, be it mathematics, science,
12 English, what have you.

13 And so, philosophically, I would hope that that is
14 the understanding that Ms. Hom would have in regards to
15 bilingual education, because that is the technique that works
16 extremely well in a most efficient way in terms of helping
17 these youngsters understand.

18 One needs to understand that when you begin to
19 access the youngster's abilities and so on not in that
20 youngster's primary language, you need to somehow help that
21 youngster gain that English before you access into the
22 content.

23 Whereas, in bilingual education, the moment that
24 youngster steps into the classroom, immediately, you can
25 begin to access that youngster's abilities and content
26 through his primary language. That is the importance; that
27 is the critical aspect of bilingual education that I would be
28 looking for.

1
2 SENATOR CRAVEN: I understand what you're saying;
3 however, you have heard today the fact that there is a great
4 dearth of people with bilingual capacity in all of the many
5 languages.

6 I have a district within my own Senatorial district
7 which, I am told, there are people living in this area --
8 which is Linda Vista, which is a portion of San Diego -- that
9 speak 61 dialects in that one area.

10 Now, don't you think it would be very, very
11 difficult to provide what you seek with that facing us?

12 DR. YEE: Well, I think that's why it is even more
13 critical that, in your deliberation of making recommendations
14 as to who is going to sit on that Board of Trustees, that the
15 individual not only says that he or she is very, very
16 committed and concerned about the bilingual children, but in
17 terms of past practices, has demonstrated that in terms of
18 actual behavior.

19 I think Ms. Hom made a very correct statement that
20 the CSU system is at a crossroads. We, in our school system,
21 rely on the CSU to essentially provide us with the teaches
22 that will be able to deal with our children. And the CSU
23 system has not been doing that in any adequate way.

24 We need some strong, aggressive leadership in terms
25 of providing that.

26 SENATOR CRAVEN: May I ask you now a personal
27 question: were you born in this country?

28 DR. YEE: No, I was not.

1 SENATOR CRAVEN: Where were you born?

2 DR. YEE: I was born in China.

3 SENATOR CRAVEN: When you came to this country,
4 could you speak English?

5 DR. YEE: No, I was not able to do that.

6 SENATOR CRAVEN: Yet you managed to survive.

7 DR. YEE: Well, I was rather fortunate in the sense
8 that I was in a classroom where all of the kids were limited
9 English proficient to some extent, some more than others.
10 And we had to rely on our friends to help us through.

11 Oftentimes, the instruction would be presented in
12 English. We were forbidden, we were punished, if we spoke
13 Chinese. And we essentially had to ask our friends, who had
14 a little bit more English ability, "What did the teacher say?
15 Explain that information." We couldn't get much help from
16 our parents.

17 SENATOR CRAVEN: Yes, I understand.

18 DR. YEE: So, we were essentially shut out in term
19 of our public education.

20 SENATOR CRAVEN: I understand what you're saying,
21 but I have a little bit of trouble in feeling it in the
22 manner in which you are presenting it, because all of that
23 discipline that was extracted -- or invoked, I guess, is a
24 better word -- produced an outstanding linguistic ability in
25 you.

26 DR. YEE: Well, I think that through a lot of hard
27 work, some of us survive. But many others have not.
28

1 We have many, many youngsters who fell by the
2 wayside.

3
4 SENATOR CRAVEN: Yes, but there are a lot of
5 youngsters that fall by the wayside who speak English, too.

6 DR. YEE: I think we also need to understand that
7 we have a different population of Asians. We have Asians now
8 who are from disfunctional families. We have Asians who have
9 left their families in Vietnam and Southeast Asia, who are
10 really pretty much emancipated minors who don't have the
11 kinds of supervision. So, I think we have a different
12 population.

13 SENATOR CRAVEN: I understand, and you've
14 articulated your case exceptionally well, in my judgment.
15 And I'm sure that Ms. Hom, when she closes, can cover off
16 that which you brought to our attention. But I, for one,
17 appreciate your comments very much.

18 DR. YEE: Thank you very much.

19 CHAIRMAN ROBERTI: Thank you, Dr. Yee.

20 Please, the next witness.

21 MR. BARILLA: Good afternoon, Mr. Chairman and
22 Members of the Committee. I'm Rocky Barilla, on behalf of
23 the California Teachers Association.

24 Unfortunately, we also have to agree in opposing
25 Ms. Hom.

26 For the record, we will echo Dr. Yee's comments and
27 Senator Mello's comments.

28 We feel that it's incumbent upon the CSU system to

1 train teaches, and that the teachers reflect the values of
2 our youngsters. Because of the diversity of our students, we
3 have to make sure that everybody's represented.
4

5 Thank you very much.

6 CHAIRMAN ROBERTI: Is there anyone else who wishes
7 to testify? Yes.

8 MR. LOPEZ: Mr. Chairman and Members, Benjamin
9 Lopez with the California Rural Legal Assistance.

10 I'm also here in my capacity representing the
11 Bilingual Community Coalition which is comprised of
12 educational advocacy organizations such as: CABE, the
13 Association for Bilingual Education; CAFABE, the Association
14 for Asian Bilingual Education; public interest law groups,
15 and similar organizations.

16 I don't think there's much left to be said. I
17 think Dr. Yee was very eloquent in his position and in his
18 articulation of the reason why we, too, must unfortunately
19 oppose Ms. Hom's appointment.

20 The Bilingual Community Coalition represents some
21 10,000 teachers, parents and administrators. The California
22 Rural Legal Assistance represents migrants, farmworkers, and
23 the rural poor. And we feel it's incumbent that the CSU take
24 a very strong leadership position in the development of
25 teachers that are going to respond to the changing demography
26 of this state.

27 Unfortunately, we feel Ms. Hom is not in that
28 position.

1
2 CHAIRMAN ROBERTI: Has Ms. Hom ever cast any votes
3 opposed to the training of bilingual teachers?

4 MR. LOPEZ: Ms. Hom and -- in her former capacity
5 with the State Board of Education was instrumental in
6 opposing AB 2813, which was the reauthorization bill which we
7 sponsored.

8 CHAIRMAN ROBERTI: But now that the bill is law --

9 MR. LOPEZ: No, it was vetoed.

10 CHAIRMAN ROBERTI: Excuse me.

11 Bilingual education now is the law, has she ever
12 cast any votes in that regard to thwart the training of
13 bilingual teachers?

14 MR. LOPEZ: No, because she's not in the
15 Legislature.

16 CHAIRMAN ROBERTI: The capacity opposition would
17 be, she's sitting on the CSU Board of Trustees.

18 MR.. LOPEZ: Right.

19 CHAIRMAN ROBERTI: Not just to ask you, but to ask
20 the others as well, and I should have, the relevancy, I would
21 say, to bilingual education is that it would, I guess,
22 formulate programs for the training of teachers.

23 MR. LOPEZ: That's correct.

24 CHAIRMAN ROBERTI: Has she ever cast any votes or
25 done anything adverse to the training of teachers as far as
26 bilingual education?

27 MR. LOPEZ: In her role as a Trustee?

28 CHAIRMAN ROBERTI: Yes.

1 MR. LOPEZ: To my knowledge, no.

2 CHAIRMAN ROBERTI: Maybe Ms. Hom can address this,
3 but it strikes me that there's a difference between someone's
4 philosophically opposing bilingual education, if indeed
5 that's the case -- and I can't recollect everything that
6 transpired in the last hearing when you were here, Ms. Hom --
7 and what your position is to implement the law, especially as
8 to the training of teachers, which I think would be something
9 that would come probably within the purview of the SCU Board;
10 whereas, bilingual education as such itself does not.

11 So, maybe you can address that.

12 MS. HOM: I would certainly encourage the training
13 of bilingual teachers. I think it's very necessary.

14 Is this a time when I can answer?

15 CHAIRMAN ROBERTI: Let me see, are there any other
16 opponents? Yes.

17 Maybe not. If you could just register that one and
18 respond later.

19 MR. LOPEZ: Dennis Lopez with the Mexican American
20 Legal Defense and Education Fund.

21 We are also opposed to this confirmation.

22 CHAIRMAN ROBERTI: Is there anyone else?

23 Ms. Hom, you might respond. Senator Mello, I know,
24 has questions he wants to ask.

25 SENATOR MELLO: I'll wait.

26 MS. HOM: First, let me just start and say that I
27 have no disagreement with the goals of bilingual education.
28

1 I think it's very necessary. We have -- I'm well acquainted
2 with the number of immigrant children. My doctoral
3 dissertation is Language Acquisition of Chinese-American
4 Students.

5
6 So, it's not as though it's a stranger to me in the
7 issue of bilingual education.

8 My role in the State Board of Education was one
9 where I was Chair of the --

10 SENATOR CRAVEN: Ms. Hom, could you get a little
11 closer to the microphone, please. Thank you.

12 MS. HOM: My role on the State Board of Education
13 was one of Chairman of the Administrative Committee. And as
14 that, we covered things like reorganization of districts, and
15 waivers, but we never covered the issue of bilingual
16 education.

17 The committee which covered the issue of bilingual
18 education was the Legislative Committee, and they were
19 certainly the ones to take up the issue of the pieces of
20 legislation.

21 I had never, in the five years that I had sat on
22 the State Board of Education, I had never once had the
23 opportunity to participate in the Legislative Committee.

24 It is indeed unfortunate that bilingual education
25 was not my issue. I mean, there were certain issues that
26 members of the Board were deeply and intensely attached to,
27 and that was, unfortunately, not one of mine.

28 And if that is certainly Dr. Yee's concern, I don't

1 know. I can't eradicate those five years.

2 I can tell you, though, I had prepared a statement
3 on bilingual education in 1988, where I never said that I was
4 opposed to bilingual education. I always said that I thought
5 that we need programs, and I also said in that statement that
6 I was excited about certain programs. I have the statement
7 here. I won't bore you by reading it.

8 Then, in 1990, I further elaborated on it, and I
9 didn't revise it, but I just added to it that I believe that
10 immigrant children should be provided with transitional
11 bilingual education programs during a period of language
12 acquisition. As a medium on instruction, the child's native
13 language should be utilized for his cognitive development and
14 skill acquisition. And simultaneously, English should be
15 required -- I mean, English should be acquired.

16 Also, you know, I feel that I've been unfairly
17 painted with this anti-bilingual education issue. And like I
18 said, it wasn't my issue. It may have rubbed off on me this
19 way, but it wasn't my issue, sir.

20 CHAIRMAN ROBERTI: Thank you.

21 Have you ever cast any votes in your current
22 position as far as the training of bilingual teachers? Has
23 that ever come up?

24 MS. HOM: No, no it has not.

25 As far as I know, it has never come up, and I can't
26 recall once when -- when the issue has arisen.

27 And I can tell you right now that I am very much in
28

1 favor of the training of bilingual teachers. And I realize
2 the necessity of doing so.

3 CHAIRMAN ROBERTI: It strikes me that the issue of
4 bilingual education is, of course, terribly important, and
5 that's been my position. But except in the training of
6 teachers, I am at a little bit of a loss as to whether we
7 should place it as the number one consideration in the
8 confirmation of a CSU Board of Trustees member.

9 Although I'm of a different party from Ms. Hom, I
10 frankly personally feel that much of the battle on bilingual
11 education has been visited on her in numerous confirmations,
12 one of which she was not confirmed by the Senate. Now we're
13 here again one more time for reasons I don't understand.

14 She and Ms. Papadakis seem to have taken the entire
15 brunt of the war on bilingual education. I frankly don't
16 understand it.

17 I intend to vote for Ms. Hom's confirmation.

18 Senator Mello.

19 SENATOR MELLO: Thank you, Mr. Chairman.

20 Let me start out by saying, there is no law on the
21 books today.

22 CHAIRMAN ROBERTI: I gather that.

23 SENATOR MELLO: So, when you refer to the law, it
24 was vetoed by the Governor, and the reason she's catching the
25 brunt, and so did Angie Papadakis, is because they led the
26 fight, and I'm going to go through and show you minutes from
27 the Board of Education meeting.

1 CHAIRMAN ROBERTI: I don't think I voted for
2 Ms. Papadakis. I can't remember.

3 SENATOR MELLO: You voted for Ms. Hom.

4 But the point is, unlike Mr. Gray, who was here
5 earlier, that does not have a track record and made some
6 commitments of support, Ms. Hom does have a track record,
7 having served on the State Board of Education.

8 This afternoon, I got a call from Mr. Zaremborg in
9 the Governor's Office, and he was concerned, because I led
10 the fight last time, what I was going to do this time. And
11 I, quite frankly, told him I was surprised that the
12 administration, the Governor, after having a person twice
13 rejected by the Senate in two different times, would then
14 reappoint her to another position even higher, our State
15 University system.

16 But for their own reasons, they have the power to
17 do that, and we have the constitutional power here to confirm
18 or not confirm any person that the Governor does nominate.

19 Ms. Hom did send me several letters, and here's her
20 policy statement on bilingual education that she referred to.
21 There's copies here. I will not read it all, either, but I
22 just want to point out a couple of sentences that I think
23 pretty well reflect at least some of her thoughts.

24 Quote, it's on the third paragraph:

25 "I am concerned about the over-
26 regulation, under-evaluation, the
27 inappropriate program placement and
28

1 assessment, the lengthy retention in
2 many cases."

3
4 Now, I've failed to read the first sentence:

5 "Bilingual education is rarely
6 carried out the way it was intended.
7 It was originally designed for the
8 Spanish-speaking population, and the
9 minority population has now
10 changed."

11 Well, we don't have anything on the books now, so
12 there's really nothing to over-regulate or under-assess
13 because the Governor, with the help of the State Board of
14 Education, vetoed the bill that would have put back the
15 statute.

16 Now, bear in mind, and this is why I carried a bill
17 this year, we're spending \$130 million per year, Mr.
18 Chairman and Members, on bilingual education in California:
19 100-and-some million of State money, and 30 million of
20 federal funds. It's going out to our schools without any
21 statute. The State Department of Education and Mr. Honig are
22 the ones who are setting forth regulations, but they have no
23 force of law.

24 What is happening in our schools -- I've done a
25 survey that I sent out to Members the last time around --
26 they are taking the money, but they are not carrying out
27 bilingual education in the way that it was before. There is
28 no standardization about the number of classes. Some schools

1 are having only one class per day, claiming to be bilingual.
2 The class size has gone from a level of 10, which was
3 required by the former law, up to 30 and 35.
4

5 Where they come into the -- where Ms. Hom, and I'll
6 show this later, what she opposed was the teacher
7 certification part that was in 2813 and AB 37 to set forth
8 the curriculum that the State certified teacher, bilingual
9 teacher, would have to have.

10 So, that's why today we are -- this is really
11 outrageous to spend \$130 million of public funds without any
12 accountability at all. That's why I think we need something
13 on the books to do it.

14 Now, let me point out that the State Chamber of
15 Commerce, Kirk West, states that many times that we have a
16 language problem in California. Some 2 million people in the
17 workforce today, or about to be in the workforce, are
18 illiterate as far as the English language. And therefore,
19 employers and the State Chamber of Commerce says: we have a
20 problem. They can't find people under today's complex work,
21 where you're dealing with a lot of chemicals in sanitation,
22 you're dealing with a lot of safety. You have to know how to
23 read, otherwise you can get damaged. That's where we are.

24 And our schools, 700,000 children that are
25 deficient in English.

26 She goes on to say here:

27 "I find it difficult to perpetuate a
28 program that is not uniformly,

1 consistently effective for all
2 language minority groups."

3 Well, there's copies here if the Members want to go into
4 that.

5 Let me also provide for the record a letter that
6 Speaker Willie Brown sent to all of us.

7 SENATOR CRAVEN: Henry, before you get on that, may
8 I ask you a question?

9 SENATOR MELLO: Go ahead.

10 SENATOR CRAVEN: It impresses me, if I followed
11 your remarks, and I tried very diligently to do that, that
12 you are agreeing with what posture she took.

13 SENATOR MELLO: Agreeing with her?

14 SENATOR CRAVEN: Yes.

15 SENATOR MELLO: Is this microphone on?

16 [Laughter.]

17 SENATOR MELLO: I'm not agreeing with her a bit,
18 because I --

19 SENATOR CRAVEN: Well, you read a statement there
20 that said that she felt that it was not being implemented
21 properly.

22 SENATOR MELLO: It's not being implemented at all
23 by the State Legislature.

24 SENATOR CRAVEN: Well, she has nothing to do with
25 the State Legislature.

26 SENATOR MELLO: Well, I'll get on with this, and
27 I'll show you her lack of support, or opposition to bills.
28

1
2 I do want to introduce for the record, Mr.
3 Chairman, the letter from the Speaker, Willie Brown, who -- I
4 will not read his letter, but I want that into the record.

5 He states on the second paragraph:

6 "... Ms. Hom's past record can serve
7 as a barometer for her future
8 performance on the Trustees. Given
9 this, my concerns are three-fold."

10 And I'll briefly recite his three concerns:

11 "First, she has not
12 demonstrated her commitment to
13 provide equal educational
14 opportunities for all California
15 students. Specifically, she did not
16 support legislation (i.e. my
17 AB 2813) which extended the sunset
18 date of several categorical
19 education programs, including
20 Economic Impact Aid, Indian
21 Education, School Improvement
22 Program, Gifted and Talented
23 Education, Miller-Unruh Reading,
24 Special Education and Bilingual
25 Education.

26 "With respect to bilingual
27 education, her position is [a]
28 disappointment, since some of these

1 programs have not been re-enacted to
2 this very day. More specifically,
3 in the bilingual education program,
4 over 700,000 language minority
5 students are at such risk that
6 districts will not continue offering
7 services to help them learn
8 English."
9

10 Now, that's a statement from the Speaker of the Assembly.

11 Now, turning to her actions on the State Board of
12 Education, in 1986, on March 12th -- these come from the
13 minutes that we were able to get from the secretary of the
14 State Board of Education. Several issues come before the
15 Board for their support. On March 12th, 1986, the State
16 Board of Education voted to adopt a "support if amended"
17 position on AB 2813. The motion failed 3-5, and there's some
18 discussion in here about the minutes.

19 SENATOR CRAVEN: It failed three to five?

20 SENATOR MELLO: It failed.

21 SENATOR CRAVEN: You mean that she unilaterally
22 wasn't responsible for this? There were four other people
23 who joined her?

24 SENATOR MELLO: Through the Chairman, if I'm
25 allowed to just make my statements.

26 CHAIRMAN ROBERTI: Senator Mello can finish his
27 statement, then, Senator, I'll let you ask questions.

28 SENATOR MELLO: He was questioning. He went on and

1 on and on, and I think he did a real job of getting his point
2 to you.
3

4 But at any rate, carrying on here, there's -- we
5 have copies of the discussion that took place. Now, there
6 was three members voting in favor of supporting AB 2813,
7 which was an extension of the Bilingual Education Act, if
8 they amended it. And the amendments would have helped
9 enhance the bill. Voting in favor of that position were:
10 Chan, Peters, and Romero.

11 If you recall, we confirmed Mr. Peters here a year
12 ago.

13 Members voting against that position were: Hom,
14 Laufenberg, Papadakis, Sarafian, and Ward.

15 Then, that motion having failed, the State Board of
16 Education then adopted, by 7-1, an "oppose unless amended"
17 position on AB 2813. The Board members voting in favor of
18 that position to oppose 2813 were: Hom, Laufenberg,
19 Sarafian, Papadakis, Peters, Romero and Ward. And the only
20 Board member voting against that was Chan.

21 She was absent during the discussion on --
22 Assemblyman Hill had a bill, and she was absent there.
23 AB 37, another Willie Brown bill that was vetoed by the
24 Governor, she was absent on that date.

25 But that shows, I think, as far as the official
26 minutes from the Board members are concerned.

27 Now, on several issues that were on the ballot,
28 Proposition 71 and Proposition 72, which I think are relative

1 because they're important to the future of education, on
2 Proposition 71 -- now, 71 was a bill that would --
3 Proposition 71, if we recall, would have expanded the Gann
4 limit and allowed more money to be spent on the schools. The
5 State Board of Education voted 9-1 in support of that to find
6 more money for the schools. The only "no" vote was by
7 Ms. Hom. She was voting one against nine people who
8 supported Prop. 71, more money for the schools, and that
9 motion carried.
10

11 On the same date, she also voted to oppose
12 Proposition 72, which was a Jarvis-Gann proposal at that
13 point. And the Board voted, right there with her present,
14 they voted 9-0 to oppose it because they did not want to see
15 the Jarvis-Gann measure pass. She abstained from voting on
16 that issue, and therefore did not get her position on the
17 record as being opposed to a Jarvis-Gann proposal.

18 Another issue came before the State Board. I think
19 if you tie all these together, then I think they try to mean
20 something. The issue came up -- this was on January 10th,
21 1986, the issue came up on equal education opportunity. They
22 reviewed the committee discussion and its recommendation to
23 eliminate the second statement under equal education
24 opportunity and to incorporate it in the over-arching [sic]
25 policy statement. Ms. Hom suggested deleting the first
26 statement, in that it is obvious the State Board recognizes
27 federal requirements and stated: It is not necessary. She
28 feels that the shorter the document, it is better.

1 I'm reading here from the minutes.

2 Mr. Chernio stated that it was the committee's
3 feeling that the statement would not hurt the document and
4 would lend to a better reception of its districts if there
5 were significant and controversial changes.
6

7 Action taken, Ms. Hom moved approval of the removal
8 of the statement, quote, "under the equal opportunity
9 section." This motion by her was defeated by a vote of 7-2.
10 Joining Ms. Hom was Ms. Papadakis.

11 It goes on and on. I just don't want to belabor
12 the point.

13 CHAIRMAN ROBERTI: Which motion was that last one?

14 SENATOR MELLO: The date?

15 CHAIRMAN ROBERTI: Yes.

16 SENATOR MELLO: It was --

17 CHAIRMAN ROBERTI: No, what was that 7-2 vote on?

18 SENATOR MELLO: It was -- she made the motion to
19 delete from the recommendation, to delete the words under
20 educational opportunity section. The Board wanted to make
21 that policy in there to show that they were in favor of equal
22 educational opportunities. She made a motion to delete it.
23 Her motion failed, thank goodness, because of seven people
24 there who felt it was better to have it in.

25 But I think, personally, several things. She has
26 demonstrated, at least in what I presented here and looked
27 at, her statement. She tries to hide under a philosophy that
28 she supported, because I think of her ethnic background,

1 which she's very proud of. And I'm proud of her background
2 as I am my own, because people who have come here and, like
3 Dr. Yee stated, we were speaking not English at our early
4 ages.

5
6 But I think that by her action, she has not been a
7 supporter of bilingual education. She uses ways of finding
8 -- that shows that she is supportive of, but she's not
9 supporting putting it into law. She's not supporting
10 putting it into a statement of equal education opportunity.
11 She's not supportive of leading a fight with Angie Papadakis
12 to have two major bills that Speaker Brown introduced to try
13 to put back into the statute.

14 I mean, to me, she's plain and simply not
15 interested in providing education to people in California.

16 Let me state, for the first time in the history of
17 the state, the Anglo population now is under 50 percent. And
18 if S. I. Hayakawa and others think that we are an English-
19 only society, I've got news for them. You walk any place you
20 want in any city, you're going to hear people speaking
21 Chinese, Korean, Taiwanese, Filipino, Portuguese, Spanish,
22 Greek.

23 And what I'd like to say here is, what we insisted
24 in my parents' home, and my father insisted, that we learn
25 English, and that's my goal.

26 SENATOR CRAVEN: On that point, you mentioned this
27 before, you said about Senator Hayakawa.

28 It isn't that he said English is the only language.

1 He wanted it recognized as the official language of the
2 United States.

3 It didn't say that you may not speak Tagalog, or
4 anything else, but that the official language was English.

5 And I don't think -- I think you are using that
6 incorrectly.

7
8 SENATOR MELLO: Well, I'll bring that up for
9 discussion at another meeting, but I can guarantee you,
10 Senator Craven, what his proposal was, to even penalize
11 cities and counties and governments who do not recognize the
12 official English language. For an example, the City of
13 Sacramento would have to change its name, San Francisco, San
14 Diego, and Monterey, and places like that.

15 SENATOR CRAVEN: I think you're getting into the
16 argument of the Equal Rights Amendment now.

17 SENATOR MELLO: I just want to say, in closing,
18 that whether we like it or not, California is rich in its
19 diversity, its ethnic make-up. We have people that are out
20 picking the crops that can't speak a word of English. People
21 working in our Silicon Valleys that can't speak English. And
22 people that are born here in the United States, some from
23 Texas, Arizona, California, that can't speak a word of
24 English.

25 And the sooner we realize that my goal -- and
26 believe me, if anybody can find my goal is to maintain a
27 language other than English, it isn't. I want everybody to
28 be proficient in the English language, and we need it now

1 more than ever.

2 That's why we need people in our University system,
3 in our K-12, that are going to recognize this diversity and
4 look at it as a real fact and want to live together, as we
5 are now bringing the world together. Just think what's
6 happened in the last year, and we have to recognize that all
7 of these great cultures and nationalities.

8 And the fact that we have a budget problem today,
9 Senator Craven, is because 800,000 people are coming to
10 California. Senator Alquist has said that many times. And
11 more than half of them can't speak English.

12 So, if they want to find a place in our society and
13 not be on welfare, which I would despise any of -- they would
14 despise it themselves, they're going to have to learn the
15 English language, and we have to provide that opportunity for
16 them.

17 That's why I'm going to be supporting people who
18 want to take that extra step to make us a nation, a state, of
19 diverse ethnic, multicultural and multinationalities, all
20 working together for a better California and a better
21 America.

22 SENATOR CRAVEN: Well, I think I understand that.
23 I'm willing to stipulate the richness and the wealth of all
24 of those languages and the people.

25 I'm of an age where I went to school with all kinds
26 of nationalities; 56 of us in the same class. And I'm very
27 cognizant of that.
28

1
2 And equally so of the fact that in Ms. Hom, you
3 have a person who speaks two dialects of Chinese, speaks
4 French, and Asian languages, and it's very, very difficult
5 for me to think that she hasn't the intellect to recognize
6 what the problem is and to take steps to make things better
7 for all Californians, regardless of what they speak; that is,
8 providing they're not speaking English.

9 CHAIRMAN ROBERTI: Senator Alquist, please.

10 SENATOR ALQUIST: Mr.. Chairman, if I may, I came
11 in here this afternoon to let you know of my high regard for
12 Ms. Hom.

13 She comes from my area, and we have been friends
14 and acquaintances for some 20 years, I suppose. Friendly
15 adversaries. She is a Republican, but she has involved
16 herself in educational matters and community affairs, and has
17 had a real constructive influence in the Bay Area.

18 I think she would be a fine addition to the Board
19 of Trustees of CSU, just based on the record that speaks for
20 itself.

21 And certainly, with her Chinese heritage, she is
22 fully aware of these problems just enunciated by Senator
23 Mello. Like Senator Mello and like Ms. Hom, my parents came
24 from another country. My father came from Sweden when he was
25 12 years old and couldn't speak a word of English. He
26 adapted to this country and did far better in our society
27 than I have done myself.

28 And I certainly agree, Senator Mello, there is a

1 need for all of our newcomers to learn English, to assimilate
2 into our society, to learn our ways. And with the over
3 750,000 people a year coming into California, mostly from
4 Third World countries, there has never been a greater need
5 for giving these people the opportunity to not only learn our
6 language, but to learn our culture, and to learn how the
7 democratic system works. That's most important.

8
9 Ms. Hom is fully aware of that, fully in support of
10 the democratic process, and I think she'd make a great
11 additional to the Board of Trustees. And I would ask you to
12 grant her confirmation to this position.

13 CHAIRMAN ROBERTI: Senator Petris.

14 Thank you, Senator Alquist.

15 SENATOR PETRIS: I'm going to be brief. I think
16 Senator Mello has covered a very important field very well.

17 It may seem unfair to harp on, you know, a handful
18 of votes at the State Board when you have so many resolutions
19 coming through, but I was also uncomfortable about the
20 position on the Speaker's bill, not only for bilingual. I
21 want to repeat the other items that were in it, some of which
22 we seem to have to fight for every year. It included
23 Economic Impact Aid -- I don't know if the Governor specified
24 why he was opposed to that. It may have been a fiscal
25 reason, not enough money -- Indian Education, School
26 Improvement Program, the Gifted and Talented Education,
27 miller-Unruh Reading, Special Ed., and Bilingual. Bilingual
28 is only one of the various provisions.

1
2 This year, we had another problem, for example,
3 with Indian Education. There wasn't enough money in the
4 budget for that. In our subcommittee, we took money away
5 from some other program that had an enormous amount and
6 shifted a little bit into Indian Education to keep it going.

7 I just want to ask a couple of questions on a
8 different matter. The same question I asked the prior
9 nominee: if it turns out that the State system is short 200
10 million -- I don't know what the number is going to be --
11 what proposal would you make or support to correct the
12 problem? Would you chop out 200 million? Would you cut part
13 of it and try to get more revenues to fill the other part?
14 What do you think the Legislature should do?

15 MS. HOM: That's a very large order that you're
16 asking me about what the Legislature should do about \$200
17 million.

18 SENATOR PETRIS: All right, let me rephrase it:
19 what should the Governor do?

20 [Laughter.]

21 MS. HOM: Well, as a -- let me just say, certainly,
22 as of last resort, we could always raise fees. Now, no one's
23 for raising fees, because I think the greatness --

24 SENATOR PETRIS: Raise student fees?

25 MS. HOM: Yes, or raise it through private sources.

26 I think the greatness of the University is the fact
27 that it's available to most students. And I surely would not
28 necessarily even consider raising fees without providing for

1 scholarships and for grants for those who are not able to
2 attend.
3

4 Two hundred million dollars is a big hunk off of a
5 CSU budget, and it's really hard to just say right at this
6 juncture which programs I would certainly cut.

7 SENATOR PETRIS: Well, I wasn't going to ask you
8 which ones. I think the question is, do you cut \$200 million
9 worth? Do you cut 100 and get 100 million in revenues
10 somewhere, meaning taxes? A combination of the two is what I
11 had in mind, or do you just say, well, we don't have the
12 money; we have to cut, period.

13 MS. HOM: Well, certainly I think a combination
14 would be preferable and probably very important to do.

15 SENATOR PETRIS: I know you've been on there a
16 short time, but longer than the last nominee.

17 So, are there any frills that are still surviving
18 that ought to be eliminated that come to your mind? Or do
19 you think we're pretty well down to a tight situation?

20 MS. HOM: I think we're down to a tight situation
21 except for, perhaps, now we certainly have cut the budget.
22 We have cut, certainly, the Chancellor's salary considerably.

23 SENATOR PETRIS: You weren't around when all those
24 things were happening.

25 MS. HOM: No, I was not, but I know that it has
26 been cut considerably.

27 SENATOR PETRIS: Well, I didn't mean you weren't
28 around for the cuts, maybe you were, but you weren't around

1 when all those problems were festering.

2 MS. HOM: That's correct, I was not.

3 SENATOR PETRIS: There wasn't any vote on the Board
4 while you were there on the salary?

5 MS. HOM: No.

6 Actually, I was appointed to the Board in October
7 of last year, but I didn't take office until January because
8 I was teaching at San Jose State. And so, I gave up my
9 position at San Jose State to do -- to come on the Board
10 after the semester was completed.

11 CHAIRMAN ROBERTI: You were appointed when?

12 MS. HOM: I was appointed actually, I think, in the
13 beginning of October or the middle of October, but I had told
14 the Governor that I was in the classroom and I wanted to
15 finish out the semester before taking office. At least
16 there'd be a perception of conflict of interest.

17 And so, my first Board meeting was not until
18 January.

19 SENATOR PETRIS: Another question on financing.

20 I understand you supported 111?

21 MS. HOM: Yes, I did, sir.

22 SENATOR PETRIS: To help adjust the Gann limit.

23 MS. HOM: Yes, I did.

24 SENATOR PETRIS: I imagine it was more for that
25 than it was for the traffic congestion.

26 MS. HOM: Yes.

27 SENATOR PETRIS: Right?

1 MS. HOM: Yes.

2
3 SENATOR PETRIS: In the past, you had opposed
4 suggestions like that, but I can see you changed your mind,
5 so there's no point going into the past on that.

6 It's a good thing to see someone, any of us,
7 changing our mind if we believe circumstances require it.
8 Some people just won't change their minds no matter what.

9 Let me just ask one other area. The Board passes a
10 lot of resolutions that come before it, or acts on a lot of
11 resolutions. They're not always passed.

12 I've often asked members if they feel they should
13 make recommendations to the Governor, either in a policy area
14 or in a fiscal area. I don't think this Board has ever
15 passed a resolution in the last eight years urging the
16 Governor to provide more money for the Cal. State system.

17 Now, he's done very well in some years. In his
18 very first year, he provided -- well, not so much in the
19 first, but I guess his second or third, a tremendous
20 increase. And I publicly applauded him for that, and I wrote
21 him a couple of fan letters, as a matter of fact, both for
22 that and U.C.

23 But there are other times when a lot of cuts, he
24 felt, were necessary and he just felt that we had to cut, and
25 couldn't even think about some revenue measures.

26 It seems to me that the Board ought to be willing,
27 if it feels that way, to include among the resolutions, at
28 least in their private letters, strong recommendations to the

1 Governor. But everyone I've asked says, "Well, that's not my
2 job. I'm just supposed to carry out my duties."

3 How do you feel about that? Would you hesitate in
4 an area about which you felt very strongly that the Governor
5 should know about? Would you hesitate to write him a letter
6 or go see him and make recommendations to him or her? We're
7 talking now in the future, of course.

8 Or, would you hold back because you don't think
9 that's part of your scope of duty?

10 MS. HOM: Senator, I will tell you, I have never
11 held back. Everytime I have seen the Governor in a public
12 place, I have always asked for more money for CSU. I mean,
13 there's been no hesitation in terms of asking the Governor.

14 SENATOR PETRIS: You've already established a
15 record on that, okay.

16 Thank you.

17 CHAIRMAN ROBERTI: Thank you, Senator Petris.

18 Yes, Senator Mello.

19 SENATOR MELLO: Senator Petris asked some nice
20 questions about her support for Proposition 111.

21 I think you might want to ask her if she'll change
22 her position once she's confirmed by the Senate, if another
23 proposition were to come up like that again.

24 MS. HOM: Of course I won't change my position.

25 But given, like you said, Senator, given more
26 information and maturity, it may happen some day that with
27 given information that I'm not -- I mean, I'm not --
28

1
2 SENATOR PETRIS: You're talking about a change in
3 the circumstances.

4 MS. HOM: Yes, that's true.

5 MR. GURIAN: Members of the Committee, I'm Bob
6 Gurian of the California Faculty Association.

7 President Pat Nicholson gave out testimony, but I
8 was sitting in the back, and quite frankly, to this question
9 of what would happen to CSU if CSU had a \$200 million budget
10 cut, the truth to the answer of that is, CSU would be
11 devastated.

12 The quality of our instruction would go down.
13 Enrollments would have to be capped. The open university
14 that we have known and we have grown with, and hoped provided
15 a substantial benefit to the people of California, would be
16 substantially reduced.

17 And it's, quite frankly, very disappointing to us
18 that members of the Trustees, when they've come up here and
19 are asked that question, have not responded that way.

20 The CSU cannot take a \$200 million budget reduction
21 and keep the quality of our instruction and our doors open as
22 we have in the past. And we think it's imperative that the
23 Trustees send that message to the Governor so that in this
24 budget crisis, that we are not looked at as one of the
25 discretionary State funding programs that's going to face
26 substantial reductions.

27 I think you all know that that's in the cards at
28 this point unless we look at the revenue side of the picture,

1 not just the cut side of the picture.

2 And we would hope that the Trustees would take a
3 forthright and forward position, and make that position known
4 to the Governor.

5 And frankly, as I said, we were disappointed that
6 the Trustees who are here today did not make as positive a
7 statement as could have been made, given the severity of the
8 problem that we now face.

9 It has nothing to do with -- you know, we still, as
10 I mentioned, do not have a position on the confirmation
11 per se, but I thought it would be important. We think this
12 budget problem is a huge one that needs to be addressed.

13 CHAIRMAN ROBERTI: Thank you, Mr. Gurian.

14 Do I hear a motion?

15 SENATOR BEVERLY: I'm pleased to make the motion to
16 approve the confirmation.

17 CHAIRMAN ROBERTI: Senator Beverly moves that the
18 confirmation of Gloria Hom as Trustee of the California State
19 University system be recommended to the Senate.

20 Secretary will call the roll.

21 SECRETARY WEBB: Senator Beverly.

22 SENATOR BEVERLY: Aye.

23 SECRETARY WEBB: Senator Mello.

24 SENATOR MELLO: No.

25 SECRETARY WEBB: Senator Petris.

26 SENATOR PETRIS: No.

27 SECRETARY WEBB: Senator Craven.

28

1 SENATOR CRAVEN: Aye.

2 SECRETARY WEBB: Senator Roberti.

3 CHAIRMAN ROBERTI: Aye.

4 The vote's three to two; confirmation is
5 recommended to the Floor.

6 MS. HOM: Thank you.

7 CHAIRMAN ROBERTI: We're going to take a five-
8 minute break, then we will have Mr. Bruce Janigian, Chair of
9 the Agricultural Labor Relations Board.

10 [Thereupon a brief recess was taken.]

11 CHAIRMAN ROBERTI: The Committee will come to
12 order.

13 I made a little error. I forgot to notice
14 Mr. Vitti, who's the other member of the CSU Board of
15 Trustees. He was on my next page. He's here for vote only.
16 Actually, we should have taken him up first. I take that
17 back; he's not here for vote only, but he was heard before.

18 Anthony M. Vitti, Member of the Trustees of the
19 California State University.

20 MR. VITTI: Good afternoon.

21 CHAIRMAN ROBERTI: Good afternoon to you, and I'm
22 trying to recall now. We put you over, but what was the
23 reason for that?

24 MS. MICHEL: No decision had been made as to
25 whether or not you were going to take up those long-term
26 appointments, at the request of a Member.

27 CHAIRMAN ROBERTI: Mr. Vitti's appointment was made
28

1 when?

2 MR. VITTI: August of '89.

3 CHAIRMAN ROBERTI: So in Mr. Vitti's case, if we
4 didn't take his appointment up now, he would actually have
5 been denied confirmation because we failed to give him a
6 hearing, which is something we've never done before.

7 SENATOR PETRIS: He has until August, so we have to
8 act now.

9 MS. MICHEL: August 26th is his 365th day.

10 CHAIRMAN ROBERTI: Are there any other questions of
11 Mr. Vitti?

12 SENATOR PETRIS: You've heard the questions to the
13 others.

14 I'm really concerned about this money situation,
15 and one of the reasons I'm nervous about the philosophical
16 appointments, remember I brought it up the first time when I
17 saw your term goes to the year 2020?

18 [Laughter.]

19 MR. VITTI: No, I think that's my life expectation.

20 SENATOR PETRIS: I see, okay.

21 We've developed this mind-set, and it's become a
22 litany. People lock-step, and nobody seems to speak out.

23 Now the President has changed course somewhat.
24 We're waiting to see what really happens on this question of
25 cutting and cutting and cutting, no matter what the
26 consequences. Not even thinking about a tax increase.

27 Now, I understand that at the last meeting or two
28

1 of the Board, they're considering the budget. Some of the
2 programs suggested by some members at least result in
3 absolute carnage with respect to what's happening at Cal.
4 State.

5
6 I want to ask you, if you felt that there's just no
7 more places to cut -- which happens to be my position from
8 some time back, actually -- would you get on the horn and
9 talk to the Governor, or urge the Board to talk to the
10 Governor and tell him, "Look, Governor, we're being
11 devastated here. We've got all these things that need to
12 continue." As one of the witnesses indicated, it would be a
13 very serious detriment to the University if the proper funds
14 weren't provided.

15 Would you, number one, talk to the Governor? And
16 number two, go public with a request that we go in that
17 direction?

18 The reason I ask is that it seems to me that if the
19 whole State Board made a public appeal, it would help create
20 the climate that would make it easier for the Governor and
21 the Legislators. I mean, there's some politicians who feel
22 that the worst thing in the world that that Legislator can do
23 is to suggest a tax increase.

24 Now, I'm not out here, carrying a banner and
25 saying, "Raise taxes under all circumstances." But enough is
26 enough. I feel very strongly about that.

27 I don't understand the mind-set anyway.
28 Politicians are afraid to raise taxes because we'll get voted

1 out. And I can tell you, it destroyed two careers: one is
2 the Senator who carried the two largest tax increases in the
3 history of this state, and what it did to him was help him go
4 on to become Attorney General and then Governor, George
5 Deukmejian; the guy who signed those two bills went to the
6 White House. So, what's everybody crying about?

7
8 All of a sudden -- not all of a sudden, but in the
9 past several years, to raise taxes is the worst thing in the
10 world, no matter what the circumstance is.

11 That being the case, it seems to me that the
12 members of the boards and commissions who have such a
13 tremendous responsibility, like running the Cal. State
14 system, ought to be talking about it publicly, and saying to
15 the people: "Look, if we cut this \$200 million, this is the
16 damage that we're going to inflict on this great system.
17 Don't force us to do that. Help us out."

18 Have you ever considered that as a Board member?

19 MR. VITTI: Well, you've touched on a lot of issues
20 and raised a lot of questions, in my mind at least.

21 To begin with, I think that with the kind of growth
22 and demands we have on the system as it is, it's -- it
23 concerns me as a member of the Board to even think about
24 cuts.

25 We have greater demands put on us each year, both
26 from the infrastructure standpoint as well as just the
27 academic side of it: satisfying the growing numbers of
28 students.

1 I have no reservations about approaching the
2 Governor with my thought.

3 And with respect to your question as to whether or
4 not I would go public, I'm not sure that that would be
5 appropriate. Whether the Board would go public would be a
6 matter for the Board to take up as a whole. I don't think I
7 would make a unilateral decision with respect to that.

8 But I have no reservations, in fact, intend on
9 offering my input with respect to the budget cuts.

10 SENATOR PETRIS: Would you urge --

11 MR. VITTI: I do have great concerns about it.

12 SENATOR PETRIS: Would you urge your colleagues on
13 the Board to make a public policy statement?

14 MR. VITTI: I seriously doubt that they need my
15 urging, but --

16 SENATOR PETRIS: Well, nobody's done it. I've
17 asked the last ten nominees, with a couple of exceptions here
18 and there, and, "Well, that's not my position to do that.
19 You know, I can't advise and tell the Governor what to do or
20 the Legislature."

21 MR. VITTI: I'm not certain I heard that today --

22 SENATOR PETRIS: No, not today, but at prior
23 hearings, yes.

24 MR. VITTI: Well, I do think it's part of the
25 duties and obligations of a Trustee to make their input known
26 to the Governor or to the Legislature, or any Member of the
27 Legislature.
28

1
2 SENATOR PETRIS: Well, it's done on a lot of other
3 issues by virtue of these resolutions that we talked about
4 earlier, but it's never done in that area. That seems to be
5 no man's land, prohibited territory.

6 MR. VITTI: It's a problem we're confronted with,
7 and the more input we get and that we give, I think, the
8 better off we'll all be for it.

9 SENATOR PETRIS: You mentioned growth. Would you
10 support a cap on enrollment as a way to save money?

11 MR. VITTI: No, I don't think I would.

12 SENATOR PETRIS: I think I asked you the last time
13 about labor relations, so I won't go into that again. I
14 think I did, but I'm not sure. I'll let it go at that.

15 Thank you.

16 MR. VITTI: Thank you.

17 CHAIRMAN ROBERTI: Are there any other questions of
18 the Members?

19 Is there anyone here in the audience who wishes to
20 testify? Yes, please come forward.

21 DR. NICHELSON: Pat Nicholson again from the Union,
22 from the California Faculty Association.

23 As you know from the testimony that we handed in in
24 writing last time and today, we recommend the confirmation of
25 Mr. Vitti. He serves on the Collective Bargaining Committee,
26 which has been a kind of center of what we regard as a new
27 and more positive relationship with the unions. We're hoping
28 that this committee will become even more active in expanding

1 the notion of collectivity.

2 We -- as Mr. Gurian said earlier, though, the
3 moment kind of transcends everything else. We're in this
4 budget calamity, and we certainly would bid Mr. Vitti and his
5 colleagues to caucus and come out publicly in support of
6 revenue enhancement for this University and for higher
7 education generally. It's terribly frustrating.

8 The employee groups in the Senate have sat through
9 recent Trustees' meetings when we know that the Trustees are
10 sincerely concerned about the devastation that they're
11 presiding over, and yet, we don't see that next political
12 move that we just think, along with Mr. Petris, is absolutely
13 necessary for all people who are entrusted with the welfare
14 of higher education.

15 Thank you.

16 CHAIRMAN ROBERTI: Thank you very much.

17 Any further discussion or debate? Is there any
18 opposition in the audience?

19 SENATOR CRAVEN: Move Mr. Vitti's confirmation.

20 CHAIRMAN ROBERTI: Senator Craven moves
21 confirmation of Anthony Vitti as member of the Board of
22 Trustees of the California State University system.

23 The Secretary will call the roll.

24 SECRETARY WEBB: Senator Beverly.

25 SENATOR BEVERLY: Aye.

26 SECRETARY WEBB: Senator Mello. Senator Petris.

27 SENATOR PETRIS: Aye.
28

1 SECRETARY WEBB: Senator Craven.

2 SENATOR CRAVEN: Aye.

3 SECRETARY WEBB: Senator Roberti.

4 CHAIRMAN ROBERTI: Aye.

5 The vote's four to nothing; confirmation is
6 recommended to the Floor.

7 Congratulations.

8 MR. VITTI: Thank you, Mr. Chairman.

9 CHAIRMAN ROBERTI: The final confirmation, Member
10 of the Board of Governors of the California Community
11 Colleges system, is Mr. David S. L. Lee. Please come
12 forward.

13
14 Mr. Lee, we'll ask you what we ask all the
15 Governor's appointees, and that is why you feel you're
16 qualified to assume this position?

17 MR. LEE: Yes, Chairman, Senators.

18 I have been a businessman, and a successful
19 businessman, and i also have worked with Stanford University,
20 and University of California at Berkeley, and also I'm on the
21 Board -- I mean, on the advisory board for the School of
22 Business in Santa Clara University.

23 I think with my background, I think I can
24 contribute to the community colleges.

25 CHAIRMAN ROBERTI: Thank you, Mr. Lee.

26 Are there any questions of Mr. Lee?

27 Is there any support or opposition in the audience?
28 Then do I hear a motion?

1 SENATOR CRAVEN: Move Mr. Lee.

2 CHAIRMAN ROBERTI: Senator Craven moves
3 confirmation be recommended to the Floor.
4

5 Secretary will call the roll.

6 SECRETARY WEBB: Senator Beverly.

7 SENATOR BEVERLY: Aye.

8 SECRETARY WEBB: Senator Mello. Senator Petris.

9 SENATOR PETRIS: Aye.

10 SECRETARY WEBB: Senator Craven.

11 SENATOR CRAVEN: Aye.

12 SECRETARY WEBB: Senator Roberti.

13 CHAIRMAN ROBERTI: Aye.

14 The vote's four to zero; confirmation is
15 recommended to the Floor.

16 Congratulations.

17 MR. LEE: Thank you, sir.

18 CHAIRMAN ROBERTI: The next is Mr. Bruce Janigian,
19 Chair of the Agricultural Labor Relations Board.

20 Mr. Janigian, I think we we wanted to find
21 something out last week.

22 Senator Petris, you were asking a series of
23 questions, I believe.

24 SENATOR PETRIS: I'll have to think about it now.

25 One of the problems that I was concerned about was
26 the testimony that Ms. Huerta brought out regarding what
27 apparently was the role and function of the regional director
28 in what I thought was very harsh and arbitrary action in

1 removing mattresses, and cutting off power, and so forth.
2 That's one of the areas.
3

4 CHAIRMAN ROBERTI: The regional director, I forget
5 the person's name.

6 MR. JANIGIAN: This was Lawrence Alderete, sir.

7 CHAIRMAN ROBERTI: Mr. Alderete, is he here?

8 MR. JANIGIAN: Yes, he is.

9 CHAIRMAN ROBERTI: Mr. Alderete, would you come
10 forward so Senator Petris can ask you in regard to this
11 situation.

12 SENATOR PETRIS: Have you been briefed on what
13 happened last week?

14 MR. ALDERETE: Yes, I have, sir.

15 SENATOR PETRIS: As I recall, there was an election
16 pending when certain incidents took place, and complaints
17 were made but nothing seemed to happen regarding the
18 treatment of workers in a particular place, removal of the
19 mattresses from where they were living so they couldn't sleep
20 there. There was another incident where the kitchen was
21 closed. I don't know if that was all part of the same
22 incident.

23 I may have to ask Ms. Huerta to refresh my
24 recollection.

25 Another one was cutting off power and light, and so
26 forth.

27 Now, I want to point out to you that my interest in
28 this is not limited to the labor relations aspect. There is

1 a statute on the books that prohibits a landlord from cutting
2 off utilities -- water, electricity and so forth -- because
3 of a dispute with a tenant. And that applies to everybody;
4 it's not limited to an employer/employee situation.

5
6 Since you've been told about that, I'd like you to
7 explain to us why those actions were taken, what is your side
8 of the story.

9 MR. ALDERETE: My actions in terms of -- I didn't
10 understand the question. I can tell you what I did.

11 SENATOR PETRIS: Okay, maybe you should tell us
12 that.

13 MR. ALDERETE: We were in the middle of an election
14 campaign, as you well know. In fact, we had, on the 9th, the
15 day that the charge, this particular charge, was filed, we --
16 my entire staff, which included secretarial staff, was out
17 voting approximately 1900 employees on May the 9th.

18 I was -- I was told via the telephone that there
19 was a charge that had been filed on May the 9th.

20 A couple of days later, I was told that the -- that
21 some workers were being evicted. And I was called by
22 Ms. Huerta and asked to seek an injunction, look into the
23 possibility.

24 We were -- we had counted the ballots that night up
25 to about 11:30 at night. We were able to speak to her. She
26 asked me to try to get the individuals reinstated, which I
27 immediately did, or tried to. I was told that they'd be
28 seeking to reinstate these individuals.

1
2 SENATOR PETRIS: Reinstate where? In their
3 housing?

4 MR. ALDERETE: No, reinstate them to their jobs,
5 because they had -- the charges that had been filed was
6 charging a discharge of these individual.

7 SENATOR PETRIS: Is that the 42?

8 MR. ALDERETE: The number is about 42, yes.

9 SENATOR PETRIS: Okay.

10 MR. ALDERETE: And so, my main concern at that
11 point was, because the -- I was not aware at that point of an
12 eviction. What I was aware of was of a termination.

13 My concern was that they get their jobs back so
14 that we would be able to vote these individuals in case of a
15 run-off, which in fact was necessary and was determined later
16 in the week.

17 There was a number of things that were going on
18 during that -- those particular days, including a challenge
19 ballot investigation, which took a considerable amount of
20 time. We issues a revised tally of ballots on that Friday,
21 which was the 11th, and I had been in contact with
22 Ms. Huerta during -- throughout this period of time and had
23 had that labor camp monitored by a couple of field examiners.

24 I was personally in touch with Mr. Watkins, who is
25 a representative for the company, and he assured me that
26 these people would be reinstated.

27 My field examiners reported to me that in fact some
28 of the people had been reinstated; however, some of them were

1 not -- we could not make contact with because either they had
2 left the area, were no longer at the labor camp.

3 I had problems --

4 SENATOR PETRIS: Excuse me.

5 Who operated that labor camp?

6 MR. ALDERETE: The -- I'm getting to that.

7 That labor -- the people were working for Gerawan
8 Ranches, and the individual who was their foreman would
9 deliver them and pick them up from this labor camp, which was
10 owned by Simoni Farms. Simoni Farms was -- did not have
11 anyone working for them at that particular time, but the
12 labor camp was owned by Mr. Simoni.

13 The regional attorney -- I directed the regional
14 attorney to make contact with this individual immediately,
15 and I believe -- well, I can say for sure, he made contact
16 with him on Friday.

17 We asked this individual to try to suspend those
18 actions. This individual indicated to us that those people
19 were living there against his wishes, and in fact, the
20 foreman who had housed them there did not have his
21 permission, and that they were trespassing.

22 SENATOR PETRIS: Whose foreman was he?

23 MR. ALDERETE: He was working for Gerawan Ranches,
24 sir.

25 SENATOR PETRIS: How long had they been there?

26 MR. ALDERETE: I can't tell you that. I'm not
27 aware.
28

1 SENATOR PETRIS: I'm wondering why that surfaced
2 right at the time of this election dispute, pending election.

3 You don't know if the workers had been there for a
4 day, or a week, or a month?

5 MR. ALDERETE: I can't tell you. I don't have
6 those facts before me.

7 But I can tell you that once the charge was filed,
8 we investigated immediately because of this request for
9 injunctive relief. And one of the things that we uncovered
10 was that Gerawan did not own this labor camp. It was Simoni
11 Farms.

12 SENATOR PETRIS: This foreman worked for whom?

13 MR. ALDERETE: Gerawan Ranches.

14 SENATOR PETRIS: And no one else?

15 MR. ALDERETE: He -- at some point in time, he
16 would also work for Simoni Farms. At that point, he was not
17 working for Simoni Farms.

18 SENATOR PETRIS: But there is some kind of
19 continuing relationship there, on and off? He works for one,
20 and then he works for another?

21 MR. ALDERETE: Yes, there is.

22 SENATOR PETRIS: So, the lines are a little blurred
23 there, I guess.

24 MR. ALDERETE: Quite a bit.

25 CHAIRMAN ROBERTI: Did he work for another ranch,
26 or whatever it is?

27 MR. ALDERETE: Apparently he worked for a number of
28

1 ranches in that area.

2 SENATOR PETRIS: Is there anything else?

3 MR. ALDERETE: Unless you have specific questions,
4 that pretty much summarizes it.

5 SENATOR PETRIS: How was the eviction carried out?

6 MR. ALDERETE: I don't understand.

7 SENATOR PETRIS: How did they get rid of the people
8 who were living there?

9 MR. ALDERETE: I understand that -- that
10 Mr. Simoni asked his foreman, or a gentleman that worked for
11 him, to give notice that the labor camp would be shut, would
12 be closed. That's my understanding.

13 SENATOR PETRIS: How much notice?

14 MR. ALDERETE: Couple of days.

15 SENATOR PETRIS: And on what grounds? That they
16 were unlawfully there?

17 MR. ALDERETE: Yes, that they had never gotten his
18 permission to reside there.

19 SENATOR PETRIS: Did your office make any effort to
20 -- you said you talked to someone. Who was it? Was it
21 Simoni or his foreman?

22 MR. ALDERETE: No. We spoke to Simoni himself, and
23 we tried to prevail on him to suspend these actions, and he
24 was adamant that these people were there without his
25 permission.

26 In fact, he was more adamant. He was a bit irate.
27 And during this period of time, a couple of my field
28

1 examiners were escorted off the property quite forcibly.

2 SENATOR PETRIS: If this foreman actually worked
3 for Simoni at some time or other, he certainly the color of
4 authority to put workers in. I suppose they know that he
5 worked for Simoni as well as other people.

6 Is that a situation where the workers knowingly
7 went in there, believing they had no right to be there? Or
8 were they following the permission of the foreman?
9

10 MR. ALDERETE: I would only be speculating as to
11 that. I'm not -- I don't know if the foreman gave them
12 permission on that color of authority.

13 SENATOR PETRIS: Didn't your investigation include
14 that?

15 MR. ALDERETE: What our investigation has uncovered
16 -- and I may say to you, Senator, that this is ongoing
17 investigation, and so I give you these facts, knowing that it
18 is an ongoing investigation -- but our investigation has
19 focused on the termination. And I believe that we have
20 evidence that has led me in that direction, that there was a
21 termination for concerted activities that occurred a couple
22 of days prior to the notice of eviction.

23 SENATOR PETRIS: During the course of the election
24 dispute?

25 MR. ALDERETE: That's correct. In fact, the charge
26 was filed the day that we were actually physically voting
27 these individuals, which was quite a large number: 1900.

28 SENATOR PETRIS: Now, what is the scope of your

1 duties in an election situation when something like this
2 arises?

3
4 It seems to me you talked to the owner, and you
5 tried to prevail on him, which I think is the decent, human
6 thing to do. Beyond that, how do you relate that to the
7 labor dispute?

8 MR. ALDERETE: I see my role as trying to ensure
9 that these individuals have the right to vote. They're
10 eligible voters.

11 I also see my role as trying to ensure that they
12 are not terminated unjustifiably or discriminated against.

13 I also try to ensure that they had their living
14 arrangements.

15 The problem I had was, the owner of the labor camp
16 was not Gerawan Ranches. Had it been Gerawan Ranches, we
17 would have been in court.

18 SENATOR PETRIS: Does that ranch have facilities?

19 MR. ALDERETE: Gerawan Ranches does have some
20 facilities.

21 SENATOR PETRIS: Were they adequate to house all
22 the workers?

23 MR. ALDERETE: They have facilities throughout the
24 Reedley-Sanger area, and also on the west side of the Valley
25 near San Joaquin. And I understand that they do have some
26 facilities. They're small facilities, and I believe they
27 house between 20 and 30 individuals, and I understood at that
28 time that they were full, because an inquiry had also been

1 made about another -- other suitable housing, which they had
2 turned down.

3 SENATOR PETRIS: I'm wondering if there's some
4 switching around going on. You know, unauthorized by the
5 foreman maybe as part of the tactic to intimidate the
6 workers.

7 Why wouldn't the employer, if he has facilities
8 available, house them in his own place? Why would they have
9 to go somewhere else?

10 MR. ALDERETE: I was told that the facilities were
11 full. We made a number of inquiries with Mr. Cal Watkins,
12 who was the representative, and they were cool to those. In
13 fact, they said that all their facilities were full.

14 Now, I have no -- I really have no basis to know
15 whether that is true or not.

16 SENATOR PETRIS: Now, did you let it go at that,
17 when Simoni says, "I don't want them here. They're illegal."

18 MR. ALDERETE: No, what we did is, we tried to
19 monitor the situation to ensure that these individuals would
20 be reinstated to their jobs.

21 The problem I had there is that a lot of people
22 left the area. I got word back that some of the individuals
23 had gone to Washington. I really have no basis to say that,
24 but that's what I was told by the investigators.

25 SENATOR PETRIS: What percentage stuck around?

26 MR. ALDERETE: Just a small percentage. I would
27 say under 50 percent.
28

1 SENATOR PETRIS: Under 50?

2 MR. ALDERETE: Under 50.

3 SENATOR PETRIS: Were they reinstated?

4 MR. ALDERETE: I believe they were, sir.

5 SENATOR PETRIS: Immediately?

6 MR. ALDERETE: If they lost any time, I believe
7 they lost somewhere between two and five days of work.

8 SENATOR PETRIS: That's all?

9 MR. ALDERETE: I believe at this point. This is
10 what the investigation at this point is uncovering.

11 SENATOR PETRIS: When did this happen?

12 MR. ALDERETE: May the 9th.

13 SENATOR PETRIS: Last year?

14 MR. ALDERETE: This year.

15 SENATOR PETRIS: This year?

16 MR. ALDERETE: Yes.

17 SENATOR PETRIS: What was the result of that
18 election?

19 MR. ALDERETE: The election -- there was a run-off
20 necessary because there was three -- three choices on the
21 ballot. Neither one of the choices received a majority, so
22 we had to call a run-off, which was necessitated within six
23 days because of the regulations, which put a real strain on
24 our resources in the region.

25 And we did another election on the 15th, and we
26 needed to do a challenge ballot investigation, which has been
27 done. We submitted that report. I signed it and submitted
28

1 it to the Board. The Board has now turned it around --
2 turned it back to me as a Board decision, and now we are
3 scheduled to count the ballots, the remaining ballots, this
4 Monday.

5
6 SENATOR PETRIS: Did the same people vote the
7 second time?

8 MR. ALDERETE: Yes.

9 SENATOR PETRIS: How'd they get back from
10 Washington?

11 MR. ALDERETE: No, well, some -- not everyone voted
12 the second time.

13 The first time around, we had 1900 people that were
14 eligible. The second time around, the same people were
15 eligible.

16 In the first election there was, I believe, 1400
17 voters. The second election, there was 1200 voters. So,
18 there was a difference of about 200.

19 SENATOR PETRIS: Were all those who voted
20 reinstated at the time of the second vote?

21 MR. ALDERETE: I believe a majority were reinstated
22 because of the high number of the turnout, the high
23 percentage of turnout.

24 It was -- my concern on the run-off was that I
25 would get 100 or 200 people to come back and vote. That was
26 my nightmare. As it turned out, we went out and did a number
27 of things in order to reach out to the voters, and we were
28 able -- including radio spots, home visits, et cetera. I had

1 everyone from the staff out doing worker notification, and
2 were able to get out 1200 voters from the original, I
3 believe, 14-plus.
4

5 SENATOR PETRIS: Well, the impression we got at the
6 meeting was that there was just no help, no help from you as
7 a regional director.

8 I'm a little hazy now on the details.

9 May I ask Ms. Huerta to fill us in, Mr. Chairman?

10 CHAIRMAN ROBERTI: Ms. Huerta.

11 SENATOR PETRIS: As I recall from your testimony on
12 this incident, it was less than two months ago. You tried to
13 get some help from the Board or the regional office. There
14 wasn't any help. You complained about them being evicted
15 arbitrarily. Mattresses removed from the place so they
16 couldn't use them, and about the firings as well.

17 Can you comment? Do you have any response to what
18 the regional director has said? Is that what happened?

19 MS. HUERTA: Well, not exactly.

20 First of all, to the statement that Mr. Alderete
21 made that these workers were living there illegally, which,
22 by the way, is also a statement that I think they made to the
23 press, that was absolutely wrong. Those workers had been
24 living in that camp for over a year, and that camp had been
25 operated for several years. And the workers in that camp
26 worked part-time between Gerawan Ranch, and when they were
27 not working at Gerawan, they worked for Simoni Ranch.

28 In terms of whether Gerawan Ranch had any

1 facilities available, Gerawan has very large labor camps that
2 literally house hundreds of workers. And there was available
3 space to have put those workers, to have housed those workers
4 that they were closing the camp on.
5

6 The workers -- the day of the last -- the day of
7 the run-off election, which was the second election, which
8 happened, I guess, about 10 days or longer after the first
9 one, those workers still had not -- were still sleeping in
10 the dark over there. And we had to find housing for them and
11 places for them to sleep. We rented some apartments so that
12 they would have a place to sleep because the previous nights
13 they had been sleeping on the ground.

14 So, we did not really get help, any help from the
15 Board, until after the elections were over. And it is true
16 that a large number of the workers in the meantime did leave
17 and one group stayed, you know, so they could vote in the
18 second election.

19 But we never did get the injunction.

20 And the thing is that between the first election
21 and the run-off election, that same company, Gerawan, laid
22 off 40 crews. I mean, you're talking about 30 people in each
23 crew. That's several hundred workers that were laid off
24 because they wanted to punish them because they voted -- they
25 thought they voted for the UFW in the first election, and
26 those crews were laid off for several weeks afterwards. And
27 that company continues -- at the same time that they laid
28 those workers off, they were hiring new workers and bringing

1 in labor contractors and new people.

2 Again, we went to the Board and said, "We need your
3 help. We need to get an injunction to get the company to
4 stop carrying on these practices."
5

6 To this day, the company is still continuing their
7 discriminatory practices. They just last week, I believe, or
8 two weeks ago, on June the 11th, fired 60 more workers. And
9 they're still continuing, and the Board has not issued any
10 charges -- any complaints against this company for what
11 they're doing. And they're still carrying on business as
12 usual.

13 SENATOR PETRIS: Now, when you say you went to the
14 Board to get some help, is that through the regional
15 director?

16 MS. HUERTA: Both. We went -- as Mr. Alderete
17 testified, I called him several times. My -- Emilio Huerta,
18 who happens to be my son, who's working in our legal
19 department, the Marcos and Camacho law firm.

20 I also called Mr. Homer Ball in Sacramento, who I
21 believe is in the General Counsel's office, and Mr. Ball told
22 Mr. Huerta to take the workers down to the Board to make
23 charges and we'll act on this.

24 I personally took the workers down to the Board
25 office and had them make the declarations, spent a couple of
26 days down there, and nothing ever happened.

27 SENATOR PETRIS: Which office was that?

28 MS. HUERTA: At the district office, Mr. Alderete's

1 office, the regional officer of the Agricultural Labor
2 Relations Board in Visalia.

3
4 At the last hearing that we had here, at the last
5 confirmation hearing, both Mr. Pressley and Mr. Janigian
6 claimed that they didn't know anything about this situation.

7 There was a lot of press, a lot of publicity. We
8 brought the press out to the camp. There was a big,
9 full-page article in the Fresno Bee about that situation.
10 So, I don't know how they could have been ignorant.

11 Emilio Huerta did call the General Counsel's office
12 and spoke directly to Mr. Ball, who said, "If you want us to
13 get an injunction, you've got to take the workers down there
14 to get declarations," which we did.

15 SENATOR PETRIS: May I ask the director, I don't
16 understand what kind of an investigation was made. Were you
17 making it, or did you assign other staff people?

18 MR. ALDERETE: I don't personally do the
19 investigation.

20 SENATOR PETRIS: Do they report to you?

21 MR. ALDERETE: Yes, they do.

22 SENATOR PETRIS: How can you say you don't remember
23 how long, or you don't know how long the workers were there?
24 They were there for a whole year.

25 Couldn't you tell the owner that this seemed to be
26 rather arbitrary?

27 If they'd been there a few days, you know, sneaked
28 in, I could see the reason, but here's a guy who's not even

1 involved in the labor dispute. There wasn't anybody working
2 there. And yet, they'd been occupying that place for a whole
3 year. I don't understand that.
4

5 MR. ALDERETE: My information does not have them
6 living there for a year. I can't pinpoint it. My -- I was
7 told by the owner that they were there against his will, or
8 without his permission. I did not say they were there
9 illegally. He simply said that they were there; he had never
10 authorized it.

11 SENATOR PETRIS: For a whole year?

12 MR. ALDERETE: Well, apparently sometimes they had
13 -- this individual had worked for him during some period of
14 time. He was not working for him at the present time. And
15 that's the problem that I had with that particular charge.

16 Now, I did say that the charges presently under
17 investigation, and without divulging the whole investigation,
18 I also said that this charge has headed in the direction of,
19 in my belief, discrimination because of the concerted
20 activity.

21 There are about 20 charges, give or take. There
22 are about 20 charges presently filed by the UFW in my office
23 related to Gerawan Ranches, and they are all being
24 investigated, and we're trying to finish them as quickly as
25 we can.

26 And the ballots will be counted Monday.

27 SENATOR PETRIS: When a grower undertakes to
28 provide housing are there certain requirements made of that

1 grower by your Board relating to the rights of the tenants?

2 MR. ALDERETE: If it's a condition of employment,
3 yes, of course there are.
4

5 SENATOR PETRIS: Well, obviously it wasn't a
6 condition at that present time, because there wasn't anybody
7 working for him; right?

8 MR. ALDERETE: I believe he was acting as a
9 landlord in that capacity, and he was not the employer at
10 that time. That's Mr. Simoni.

11 SENATOR PETRIS: Assuming they'd been there a whole
12 year, do you believe that there were no labor activities, no
13 workers working for him for the whole previous year?

14 MR. ALDERETE: No, I'm sure there was workers
15 working for him sometime other than at that time because he
16 is in the same type of business as Gerawan Ranches. Sometime
17 prior to that, there were people probably working for him.

18 Now, whether they were the same individuals, I
19 cannot answer that in the affirmative. But I'm sure there
20 were people working for him.

21 SENATOR PETRIS: Who was it that enforced the
22 eviction, removing the mattresses?

23 MR. ALDERETE: I believe it was -- I'm not sure if
24 someone did -- I don't know who physically did that, but I
25 was told that it was one of his foremen who informed them
26 that they had a certain amount of time to leave the premises.

27 MS. HUERTA: I might add that in the worker
28 declarations that Mr. Alderete has in his files, the workers

1 that we took down there to make declarations, the workers do,
2 in those declarations, state that they had lived in that camp
3 for many months, and that they had worked for Gerawan, and
4 when Gerawan didn't employ them, that they would work for
5 Simoni. And those are in his files.
6

7 SENATOR PETRIS: That's part of the process that's
8 going on now.

9 What's your impression now, Ms. Huerta, of the
10 present status of this whole thing?

11 MS. HUERTA: Well, it's still, as I say, the
12 Gerawan is still retaliating against workers. They have
13 fired 60 workers within the last two weeks. And they're
14 going after those crews of workers that they felt voted for
15 the United Farm Workers in the election.

16 We're very confident that we're going to win the
17 election. We only need about four or five votes of the
18 challenge ballots to be declared winners of the election, so
19 we're confident that we're going to win.

20 And the company is still retaliating against
21 workers that they thought voted for the Union.

22 SENATOR PETRIS: Is that an unfair labor practice?

23 MS. HUERTA: Yes, and there's -- as he said,
24 they've got 30 unfair labor practices the cover more than 30
25 workers, obviously. Cover many, many more. Those are just
26 individual charges that cover a lot more workers. And we
27 still don't have any kind of a complaint against Gerawan
28 Company.

1
2 And we, you know, heard Mr. Janigian say they're
3 going to move expeditiously, and they're going to move fast.
4 We're talking about seasonal work, seasonal labor, and yet it
5 takes months to get these charges out.

6 I have -- I've prepared a paper for the Members.
7 I'd like to leave it with you because I also have testimony
8 here in another company called Sunnyside, where, there again,
9 we have, you know, 30 charges against the employer, and the
10 Board has not -- I mean, the regional director in that area,
11 Salinas, has not issued a complaint against the company.
12 They had a decertification election against us since I last
13 saw you, which luckily we won. But the company is doing all
14 these anti-labor things: bringing in labor consultants; they
15 assaulted one of the female workers there; they fired many
16 workers. And we can't get any kind of a charge out against
17 the employer.

18 So, the main thing is, it's business as usual.
19 Nothing has changed. Everything is happening exactly the way
20 it's been happening.

21 CHAIRMAN ROBERTI: When the workers in the labor
22 camp were being evicted, what company did you say was the
23 employer at that time?

24 MR. ALDERETE: Gerawan Ranches.

25 CHAIRMAN ROBERTI: Gerawan Ranches, but the foreman
26 at the labor camp, you're saying, was Simoni?

27 MR. ALDERETE: Simoni was the owner of the labor
28 camp.

1
2 CHAIRMAN ROBERTI: He was the owner of the labor
3 camp.

4 MR. ALDERETE: That's right.

5 CHAIRMAN ROBERTI: But the workers were at Gerawan
6 Ranches, so you're saying that at that time, Simoni was the
7 person who was hassling the workers?

8 MR. ALDERETE: At that time, there was a foreman
9 who had put these people to live at a ranch -- excuse me, at
10 a labor camp that was owned by Simoni. But this individual
11 was also working for Gerawan. So, when he did what he did,
12 we felt, through the investigation, that our evidence is
13 leading toward the conclusion that in fact these workers were
14 let go because of the things that they had complained of.

15 However, someone else owned the labor camp. So, he
16 was also working for Gerawan Ranches.

17 CHAIRMAN ROBERTI: So, the foreman was working for
18 Gerawan Ranches, and who placed the workers at this labor
19 camp?

20 MR. ALDERETE: He did.

21 CHAIRMAN ROBERTI: So it would just seem that
22 Simoni was doing what Gerawan wanted him to do.

23 MR. ALDERETE: Ms. Huerta testified that there was
24 mass layoffs shortly after the first election, and that is
25 true. We have a charge that we're investigating, and we also
26 have objections to the election.

27 CHAIRMAN ROBERTI: When were these activities? The
28 eviction of the workers, you said, took place in May?

1 MR. ALDERETE: May the 9th.

2 CHAIRMAN ROBERTI: And the layoffs of the workers
3 took place when?
4

5 MR. ALDERETE: The mass layoff?

6 CHAIRMAN ROBERTI: Right.

7 MR. ALDERETE: That occurred a few days after. I
8 believe it occurred on the 10th or 11th.

9 MS. HUERTA: The next day.

10 CHAIRMAN ROBERTI: Of May?

11 MR. ALDERETE: That's right.

12 CHAIRMAN ROBERTI: And when was the second
13 election?

14 MR. ALDERETE: The second election was on the 15th.
15 It was six days later.

16 CHAIRMAN ROBERTI: Of what?

17 MR. ALDERETE: Of May.

18 CHAIRMAN ROBERTI: And are the votes being counted
19 now?

20 MR. ALDERETE: Those votes were tallied, and we
21 need to do a challenged ballot investigation because there
22 wasn't a sufficient number for a majority.

23 CHAIRMAN ROBERTI: So the challenge ballot
24 investigation's going on right now?

25 MR. ALDERETE: No, no, no. That's done, and the
26 Board got that back to me in a Board decision, and those
27 ballots will be counted on Monday.

28 CHAIRMAN ROBERTI: So, we will know Monday who the

1 victor is?

2 MR. ALDERETE: I believe you can safely say yes.

3 CHAIRMAN ROBERTI: For purposes of argument, if
4 non-Union happened to win, would the Board still entertain
5 challenging it because of the hassling of the workers at the
6 election?

7 MR. ALDERETE: Well, there are objections pending
8 that are screened through the Exec. Sect.'s office. And
9 that's where the election will be challenged by the parties
10 that participated. We do have a role in it.

11 CHAIRMAN ROBERTI: When does that take place?

12 MR. ALDERETE: Has not been scheduled because we
13 were working on the challenge ballots.

14 CHAIRMAN ROBERTI: And Mr. Janigian, you're saying
15 this is the first you've heard of this situation?

16 MR. JANIGIAN: Senator, this Gerawan election, as
17 far as the Board was concerned, was handled in a superb
18 manner by our regional director.

19 This was the fastest processing of any election, I
20 believe, that has ever happened at the ALRB. It was handled
21 because we pooled our resources. I send people down from
22 Sacramento. We sent people up from El Centro, from Salinas.
23 These people worked into -- late into the night. Everyone
24 did a remarkably fine job on this. We worked very, very
25 hard.

26 As soon as the election was completed, I came down
27 to Visalia. I met with Ms. Huerta's son, Emilio, and other
28

1 representatives of the UFW. None of these issues was
2 mentioned.

3 The processing was moving forward, and everything
4 looked like this was turning out to be an unblemished model.

5 The first time I heard of any of this was at our
6 meeting last week.

7 CHAIRMAN ROBERTI: Are there any others who wish to
8 testify either in support or in opposition to Mr. Janigian's
9 confirmation? Please come forward.

10 MR. LOPEZ: Dennis Lopez with the Mexican-American
11 Legal Defense and Education Fund.

12 We're also opposing this confirmation. I think
13 much of what has been said today underscores the problem of
14 workers who have, justifiably so, feelings that the ALRB is
15 not going to respond to their needs.

16 CHAIRMAN ROBERTI: Mr. Janigian, you can conclude.
17 Do you want to rebut some of the statements that have been
18 made, either this week or earlier?

19 MR. JANIGIAN: I have one comment to make, which is
20 in response to Senator Petris' standing question that he
21 voiced earlier to all of the appointees today concerning
22 philosophy.

23 If I may address that at this time, I would just
24 say that I bring no philosophy to the Board, other than that
25 which I expressed last week, and that is to help the Board
26 satisfy the letter and the spirit of the law, and to protect
27 the rights of agricultural employees to freely choose and
28

1 enjoy their rights of collective bargaining.

2 I would also point out, based on the transcript
3 that was prepared, that I am being confirmed for the position
4 of member of the Agricultural Labor Relations Board. The
5 position of Chair of the Board is at the Governor's
6 discretion.

7 And with regard to Senator Petris' comment earlier,
8 whoever will be the next Governor, will, within the first
9 week of taking office, have the opportunity to appoint a new
10 Chair at that time; a new member and a new Chair at that
11 time.

12 So, I don't want any confusion at be remaining that
13 I am somehow going to be an arbitrary selection.

14 CHAIRMAN ROBERTI: So, the Chair position is
15 actually a designated position called "Chair"?

16 MR. JANIGIAN: The Chair serves at the pleasure of
17 the Governor, sir.

18 CHAIRMAN ROBERTI: So, that's a pleasure position?

19 MR. JANIGIAN: Yes, sir. It's a designee,
20 Governor's designee, not subject to confirmation, as I
21 understand it. They confirmation is of the appointment as a
22 member of the ALRB.

23 CHAIRMAN ROBERTI: The Chair has to be a member,
24 though.

25 MR. JANIGIAN: Yes, sir, but there will also be a
26 membership position becoming available at the beginning of
27 January, and that's why I say --
28

1 CHAIRMAN ROBERTI: Yes, I understand.

2 MR. JANIGIAN: I mention that to clarify any
3 questions.

4 CHAIRMAN ROBERTI: Any further questions?

5 MS. HUERTA: Could I make a comment?

6 CHAIRMAN ROBERTI: Ms. Huerta, and then Senator
7 Mello.

8 MS. HUERTA: I'd just like to make an additional
9 comment.

10
11 In the hearing, Mr. Janigian made the statement --
12 and I think that's what we saw at work at Gerawan Ranch -- he
13 said, and I quote him, "This idea of credibility of the
14 regional director causes an openness between the regional
15 directors and the employers, so that when the regional
16 director simply contacts an employer and says, 'Hey, this is
17 not appropriate conduct; knock this off,' they'll respond
18 even short of having to get into any kind of legal
19 wrangling."

20 This is what we saw. Everytime I would talk to
21 Mr. Alderete or the people at the regional office, they would
22 say, "We've talked to the employer. They're going to put
23 them back to work," but they wouldn't.

24 And we don't need a public relations-type of people
25 on the Board. We need people that are willing to go into
26 there and take legal action against the employers when they
27 violate the law.

28 We don't need people on the Board that are going to

1 do maneuvering to bail out the employers so that they can
2 evade their legal responsibilities when they have violated
3 the law.

4 This is the kind of situation that we have right
5 now, and this is why we are again expressing our opposition
6 to Mr. Janigian's appointment.

7 CHAIRMAN ROBERTI: Yes, please come forward.

8 MR. CASTILLO: Tony Castillo, Director of the Labor
9 Council for Latin American Advancement in California.

10 I would urge the Chairman and the Members to vote
11 against the confirmation.

12 I think the ALRB is due for a change. The workers
13 of California, the agricultural workers of California, have
14 suffered long enough, and a change is long overdue.

15 Thank you.

16 CHAIRMAN ROBERTI: Thank you.

17 Senator Mello.

18 SENATOR MELLO: Thank you, Mr. Chairman.

19 Going back to the point where he mentioned that the
20 Chairmanship would be up to the new Governor, but one of the
21 ironies about now that we're coming to the end of a
22 Governor's term, and we came to another end earlier, but
23 Mr. Janigian will serve until January 1, 1995, which is a day
24 beyond the next elected Governor's taking office. So,
25 whoever the elected Governor is, he will not be able to name
26 a person to take his place, and it'll take, as it did before,
27 it takes about three years out of the four-year first
28

1 Governor's term for the new Governor to have his people
2 appointed there.

3
4 Today in my conversation with Mr. Zaremborg from
5 the Governor's office, I did point out to him that one of the
6 things I dislike in all of the appointments, and I thought a
7 remedy might be for setting a time limit. Once we change
8 administrations, have all of the appointments, except the
9 University of California and the State University, because
10 they should remain independent from being changed by an
11 administration, but have a term so that their terms would be
12 up, say, one year after the appointing authority ceases to
13 serve in office.

14 I don't know whether this Governor would support
15 that or not, but it's sure something we have to consider. I
16 say that mainly because when people vote in a new
17 administration, they're voting in a new leader, and that
18 person should have a change to bring their policy in. I
19 think it works for whether it's a Democrat or a Republican.

20 I think it's sort of ironic that Mr. Janigian will
21 be serving past the term of the next elected Governor in the
22 State of California.

23 I'm getting calls from Senators, the County Labor
24 Council called in opposition to your appointment, and so did
25 the Teamsters' Union, Local 912. So, I think there's a
26 rising opposition that I'm hearing down there.

27 But I very seldom open up these law books that I
28 have in my office, but today I wanted to see what the State

1 policy was. I've heard it recited before. I think your
2 statement that you just read about your philosophy falls
3 short to echo what the Legislature has adopted as a policy.
4 1148.2 of the State policy reads as follows:
5

6 "It is hereby stated to be the
7 policy of the State of California to
8 encourage and protect the right of
9 agricultural employees to full
10 freedom of association, self-
11 organization, and designation of
12 representatives of their own
13 choosing, to negotiate the terms and
14 conditions of their employment, and
15 to be free from interference,
16 restraint or coercion of employers
17 of labor, or their agents, in the
18 designation of such representatives
19 or in self-organization, or in other
20 concerted activities for the purpose
21 of collective bargaining or other
22 mutual aid or protection. For this
23 purpose this part is adopted to
24 provide for collective-bargaining
25 rights for agricultural employees."

26 MR. JANIGIAN: I completely agree and adopt that
27 statement as well, Senator. I didn't choose to read that to
28 you.

1 SENATOR MELLO: This is the law.

2 MR. JANIGIAN: I understand that, sir. I'm
3 completely conversant with that.
4

5 SENATOR MELLO: What you read were your views that
6 were somewhat reflective, but I think, we have appointments
7 to different boards and commissions here. A lot of them are
8 sort of balanced and say they're to run a certain program as
9 set forth by statute.

10 This clearly states that the policy of the State of
11 California is to reach out and protect agricultural workers.
12 That is our stated policy, and it's still the law. We
13 haven't rescinded that.

14 It seems like a lot of the discussion we're having
15 here today -- and believe me, I'm not an attorney -- but it
16 just seems like when you read this, it's a clear policy. You
17 wonder why these things go on in our society when this is the
18 policy of the State of California.

19 MR. JANIGIAN: Senator, we agree with that
20 policy, and we are doing everything we can to see that that
21 policy is enforced.

22 I would ask that you take a look at the record of
23 the Board since I came into the Board in February, since I've
24 become Chair, and ask if there is not a discernible change
25 evident at the Board.

26 I would maintain that the Board is working harder
27 now, moving cases faster, that our field offices have a new
28 spirit, that there is a sense of cooperation out there that

1 somehow just isn't reaching this Committee room, but that is
2 evident in the field. It is evident in our field offices,
3 and it is evident at the Board. We have gotten out more
4 cases since that time than we have previously. We are
5 working faster. We are working harder.

6 We are turning around -- I just mentioned the
7 Gerawan case, which is the largest election case we've had in
8 years, and this Union will find out the result very shortly.
9 But I can tell you that we've made available that result to
10 them faster on the turnaround time than ever previously in
11 the history of this Board.

12 We are investigating every option to make this law
13 work, and that's taken place since I came to the Board in
14 February.

15 If I'm speaking with some sense of conviction and
16 passion, it's because I feel passionately in supporting this
17 law and in getting this Board to work. I can't reiterate my
18 feelings stronger.

19 You mentioned a union that came in against. I had
20 phone calls from unions saying that they voted in support of
21 me, not to oppose me. I got phone calls on that today. So,
22 you're hearing from some, but you're not hearing from
23 others.

24 Beyond what I've said on the record, beyond a full
25 review, there's really nothing more I can say.

26 SENATOR MELLO: I'll state, then, the names,
27 because I want the record to show: Penny Shance is the
28

1 Executive Director of Santa Cruz County Central Labor
2 Commission. They called and want a no vote on you.
3

4 Then Sergio Lopez, who's the Secretary-Manager of
5 the Local 912 Teamsters Union, which represents Santa Cruz
6 County, he's also opposed.

7 Frank Gallegos from the Teamsters in Salinas also
8 called with the same thing.

9 Let me ask you another question. This morning in
10 the Mercury, I was somewhat surprised at this, to see the
11 decline of membership in the UFW, which in 1983 had 12,500
12 just in the Salinas area themselves. That has now dropped to
13 4,000, as stated in the San Jose Mercury.

14 Now, that shows there's been a lot of
15 decertification; there's been a lot of unwillingness on
16 people that have signed contracts, legally entered into it.

17 But the point is, now, you're coming in, and you
18 can't be blamed for past practices, let's say, but what
19 happened during the time Governor Deukmejian became Governor
20 and this so-called shift in philosophy?

21 I'm exempting former-Senator Jim Ellis from this
22 because I think he did not lead to any erosion of rights of
23 farm labor while he was serving on that Board.

24 But something happened, because we're still farming
25 as much as we did before, and still doing everything else.
26 How come this anti-union attitude against workers who now
27 have voted to decertify, or have been wiped out by some other
28 means?

1 MR. JANIGIAN: There must be a scientific term that
2 fits this situation, only I'm unaware of the term.
3

4 But in essence, this is a situation of history
5 being placed into a present context, and it isn't the case.

6 When I came in in February, the record was much as
7 you suggested. There was practically no election activity
8 taking place, other than decertification elections.

9 Since I've been in, since I've been talking with
10 the UFW, since I've been talking with other unions, since
11 we've expressed a sincere effort to get this situation turned
12 around, there has been more election activity taking place
13 than previously, and the Board is working diligently to
14 facilitate the results of those elections so that the Union
15 is thereby enabled to continue with its activities to get
16 more elections going.

17 I think there has been a discernible turnaround.

18 What you're saying is a situation for the past
19 would reflect determinations made at various levels. One of
20 the levels is by the unions themselves. When the unions
21 choose to be active and when the unions don't choose to be
22 active is something that they determine. What motivates the
23 public, we can only try to understand through open
24 communication and through contact.

25 Since I've come in, since the very first week I've
26 come in, I've tried to open that communication across the
27 board so that we can be responsive to the concerns of the
28 public. And I feel strongly that the public is in a far

1 better position today than they were in February with regard
2 to having the ALRB responding to their concerns.

3 We can't work miracles, sir.

4
5 SENATOR MELLO: You just stated that this most
6 recent election, that it was the speediest count of any
7 election you're aware of.

8 This is the thing that's surprised me since I've
9 been here and even before I got here, is, we have an
10 election, 10 million people vote, or 12, and if the election
11 results aren't out by 11:00 o'clock that night, when the
12 polls close at 8, people are all unhappy, saying, "What's the
13 matter?"

14 I've seen elections conducted by the ALRB that have
15 taken 12 months and longer to certify. Now, that seems to me
16 that there's some lousy, sloppy administration going on
17 there.

18 Why can't they give a person an eligibility card
19 going in, having checked out before the election? They know
20 they're a worker; they're on the payroll; they receive checks
21 and everything, and certify, as you do. I know you have
22 inspectors down there.

23 But then they seal the ballots, and I don't know
24 what happens, whether they -- it takes a heck of a long time,
25 at least a lot of suspicion that the election count is being
26 rigged or manipulated by somebody.

27 MR. JANIGIAN: In the past, we looked through some
28 earlier years, there have been cases going back into the

1 '70s, where it took 4½ years to get to counting the ballots
2 of an election. I think that's simply unacceptable. I think
3 a year is far too long.

4 We're looking at every way possible to speed this
5 process up.

6 Clearly, the spirit and the intent of the law, and
7 the letter of the law, is that these proceed expeditiously.
8 And I think the Board, from inception, has moved far too
9 slowly in handling elections. I couldn't agree more with
10 you.

11
12 SENATOR MELLO: Tell me this. What's the oldest
13 case that's unresolved before the ALRB? It dates back to
14 what year?

15 MR. JANIGIAN: Any case, or election case, or --

16 SENATOR MELLO: I'm looking the oldest date you
17 have on a case.

18 MR. JANIGIAN: There is one case only, which is a
19 unique case, which is being worked on expeditiously, and has
20 been worked on once it came to my attention, which is,
21 perhaps, 2½ years old.

22 But there's no other cases. The only other cases
23 that would be anywhere near -- there's no other case that's a
24 year old. And we're getting that time frame back. We are
25 trying to get cases processed in 90 days.

26 SENATOR MELLO: Let me ask you if there's a case
27 that goes back to 1978?

28 MR. JANIGIAN: If there is any case going back to

1 1978, it would be still with the Board because it's been up
2 and down through the courts. This can happen. And
3 frequently, when people say that cases are at the Board for
4 10 years, or something of this sort, it's not that they're
5 sitting at the Board. It's that they're going up and down
6 through the courts. They go up and down several times
7 through the courts.
8

9 Another thing that we're trying to look at is ways
10 of conducting our proceedings in a fashion that prevents
11 repetitions back and forth through the courts to avoid this
12 kind of thing happening. But again, this has been happening
13 since the very beginning, and to me, it reflects a very, very
14 dismal effort to really pursue the intent and the spirit of
15 the law.

16 This is not anything that hasn't -- that's recent.
17 This goes all the way back to the beginning.

18 There are efforts that we're undertaking now that
19 will expedite the way this Board has done business from the
20 get-go, from '75.

21 SENATOR MELLO: We go through these confirmation
22 hearings that we hear on a weekly basis, it's amazing.
23 People can smile, and as you just agreed to this State
24 policy, and I hope you live up to that.

25 But the question is, a lot of them leave here and
26 violate the very promises that they made before the Senate
27 Rules Committee and the Senate, who is the confirming
28 authority. And we have no recourse. In some cases, we've

1 confirmed people that, personally, and speaking for myself, I
2 just regret people that I voted for that later I regret that
3 they're confirmed, because they turn out to be a disaster.
4

5 MR. JANIGIAN: Senator, you confirmed me about six
6 years ago as the General Counsel-Deputy Director of the
7 Employment Development Department. I haven't heard a word
8 about my record at the Employment Development Department here
9 before you.

10 I think I have an outstanding record of public
11 service, and to make a statement of that kind without having
12 some basis for it --

13 SENATOR MELLO: I wasn't directing this at you.

14 I'm saying, people that we have confirmed, and
15 you've probably been one of them, I agree, I don't know
16 anything negative about your prior record.

17 But I don't want to get into names, because that
18 won't serve any useful purpose.

19 I wish we had a system that would allow a way to
20 retrieve a confirmed person after two years, or something
21 like that, if there's a reason to do that, or else have a
22 shorter term when the Governor leaves office. You know, have
23 his appointees go with him.

24 CHAIRMAN ROBERTI: That might be a little
25 difficult.

26 MS. HUERTA: I would like to give the Senators a
27 paper that I prepared that shows what's been going on since
28 Mr. Janigian's been in office, which will show that the Board

1 processes are still pretty much the same as they were before.
2 And I've got correspondence and letters to prove that the
3 Board is still getting together with the employers, and then
4 they decide what they're going to do.
5

6 Also, there's one election case that's been sitting
7 at the Board since last October, which is Futakawa, the 500
8 strawberry workers. There were two frivolous objections that
9 were filed. One objection said that the California Rural
10 Legal Assistance was acting as an agent of the UFW, and the
11 other one said that the UFW had tried to bargain with the
12 employer before the election. Both of those objections
13 really shouldn't have even been set for hearing.

14 They had the hearing back in October. That's been
15 almost 10 months ago, and we still don't have a
16 certification.

17 The Board's only issued seven decisions this year,
18 seven. Under the Brown administration, they issued as many
19 as a hundred a year. And of those seven decisions, only one
20 of them, I think, maybe two, might be anything important.
21 The rest of them were individual cases.

22 One of the decisions that they -- one of the
23 decisions that came before them, which was another union that
24 brought that, had to do with the labor contractors, whether
25 they're employers of workers or not. The law clearly says
26 that they're not. But instead of deciding on that, they've
27 scheduled that for a hearing.

28 So, we've seen them sidestepping the legal issues

1 and procrastinating and not dealing with them, and I don't
2 think that Mr. Janigian, from what he has shown us since he's
3 been in office, is going to do any different than what's
4 already happened.

5 I would like to leave this with the Members of the
6 Committee. Put it in your ALRB 1990 files, and let's hope
7 that in the future, things will change.

8 CHAIRMAN ROBERTI: Thank you, Ms. Huerta.

9 Senator Petris.

10 SENATOR PETRIS: I didn't finish my questioning of
11 the director.

12 Just, very brief --

13 SENATOR MELLO: I apologize to Senator Petris if I
14 interceded.

15 SENATOR PETRIS: No, not at all. In fact, Senator
16 Roberti jumped in with some very good questions. I didn't
17 mind that at all.

18 There's just one little area there between
19 Mr. Simoni and that other company, Gerawan.

20 Did you make any effort to prevail upon the
21 employer to either provide housing or appeal to Simoni to let
22 them stay?

23 MR. ALDERETE: Yes.

24 SENATOR PETRIS: What happened there? He must have
25 said no.

26 MR. ALDERETE: Yes, he said no. He said that the
27 labor camps that he had were being used and he had no other
28

1 available. Now, this is what Mr. Watkins represented to me,
2 who is the attorney for Gerawan.

3 SENATOR PETRIS: He said they were all full?

4 MR. ALDERETE: Yes.

5 SENATOR PETRIS: Now, what about asking his
6 cooperation with Simoni?

7 MR. ALDERETE: We talked about him contacting
8 Simoni, and he said that he had no authority because he did
9 not represent Mr. Simoni, but it was discussed.

10 He was -- he would not entertain any idea of doing
11 that because of the representation issue.

12 SENATOR PETRIS: I guess he wasn't inclined to tell
13 his own client that, either, pass it on?

14 MR. ALDERETE: Well, no, I didn't ask him that,
15 sir.

16 SENATOR PETRIS: Thank you.

17 MS. HUERTA: I did ask Mr. Gerawan directly at the
18 election, the first election. Directly, I went up to him and
19 said, "Could you please put these people to work and give
20 them a place to live? You have a lot of camps."

21 We knew how many people were in each camp because
22 we were doing the election campaign. We knew they had a lot
23 of vacancies.

24 And Mr. Gerawan's answer to me was, "It's not
25 important."

26 MR. LOPEZ: At MALDEF we also had a question on the
27 affirmative action record of the agency, specifically as it
28

1 pertains to Chicano-Latino employees. We were concerned with
2 the number of attorneys hired, the Chicano-Latino attorneys
3 hired, in the last eight years or so, and then also with the
4 opportunities for upward mobility of existing Chicano-Latino
5 staff and attorneys in the agency.

6 CHAIRMAN ROBERTI: Mr. Janigian, you may conclude.

7 MR. JANIGIAN: We have one -- since I've been at
8 the Board, we've had no promotions for attorneys. There is
9 one promotion pending. There are two people on the list. Of
10 those two people, one is a Hispanic employee.

11 The Board retains something in the neighborhood of
12 close to 50 percent Latino-Hispanic employees, and I don't
13 know what else I can say.

14 CHAIRMAN ROBERTI: Does anyone else wish to testify
15 who hasn't testified?

16 Do I hear a motion?

17 SENATOR CRAVEN: Move Mr. Janigian.

18 CHAIRMAN ROBERTI: Senator Craven moves
19 Mr. Janigian's confirmation to the Floor.

20 SENATOR MELLO: Mr. Chairman, before we call the
21 roll, I would -- I think there's been enough said here,
22 enough controversy.

23 I'd rather see his name go to the Floor without a
24 recommendation, as something I can vote for. I just don't
25 want to vote recommending him, as we normally do, to the
26 Floor, because I think in the last 48 hours, we're hearing
27 from more people around the state, certainly in my district.
28

1 He will not be taken up, at any rate, until August.

2 CHAIRMAN ROBERTI: Mr. Janigian, if you were sent
3 to the Floor, we always wait two weeks. Of course, the
4 summer recess would amount to the time, but that will give
5 everybody a chance --

6 SENATOR MELLO: I don't know whether Senator Craven
7 would recognize a substitute motion, or --

8 CHAIRMAN ROBERTI: Well, why don't you just offer
9 the substitute motion, then.

10 Senator Craven offers a substitute motion that
11 Mr. Janigian be sent to the Floor without recommendation.

12 Secretary will call the roll on the substitute
13 motion.

14 SECRETARY WEBB: Senator Beverly.

15 SENATOR BEVERLY: Aye.

16 SECRETARY WEBB: Senator Mello.

17 SENATOR MELLO: Aye.

18 SECRETARY WEBB: Senator Petris. Senator Craven.

19 SENATOR CRAVEN: Aye.

20 SECRETARY WEBB: Senator Roberti.

21 CHAIRMAN ROBERTI: The vote is three to zero; the
22 substitute motion passes. That is an amendment to the main
23 motion.

24 Now we have to vote on the main motion, which is
25 the same vote as you just cast, since those are our rules.

26 Secretary will call the roll.

27 SECRETARY WEBB: Senator Beverly.

1 SENATOR BEVERLY: Aye.

2 SECRETARY WEBB: Senator Mello.

3 SENATOR MELLO: Aye.

4 SECRETARY WEBB: Senator Petris. Senator Craven.

5 SENATOR CRAVEN: Aye.

6 SECRETARY WEBB: Senator Roberti.

7 CHAIRMAN ROBERTI: The vote is three to zero; the
8 nomination is sent to the Floor without recommendation.

9 Thank you.

10 [Thereupon this portion of the
11 Senate Rules Committee hearing
12 was terminated at approximately
13 5:27 P.M.]

14 --oo0oo--
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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of July, 1990.


EVELYN J. MIZAK
Shorthand Reporter

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APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ALEXANDER R. CUNNINGHAM, Member
Public Employment Relations Board

RASH B. GHOSH, Ph.D., Complainant
EEOC Discrimination Lawsuit Against DHS

MARY L. BOX, Employee
State of California

DWIGHT R. HOENIG, Manager
Northern California Office
Mittelhauser Corporation

CHRIS J. CAMPBELL, Executive Director
Southern California Coalition for Hazardous
Materials Management

LEW DUNN, Resident
Casmalia, California

LYNDA LOIE PAXTON, Resident
Oxnard, California

MARLENE MILLINGTON, Resident
Amador County

APPEARANCES (CONTINUED)

1
2 TED SMITH, Executive Director
3 Silicon Valley Toxics Coalition

4 ARUN K. ROY, Associate Waste Management Engineer
5 Toxic Substances Control Program
6 Department of Health Services

7 HOWARD HATAYAMA, Regional Administrator, Region 2
8 Toxic Substances Control Program
9 Department of Health Services

10 H. W. RIDGEWAY, Owner
11 H.W. Ridgeway & Associates

12 PHYLLIS KISER, Resident
13 Amador County

14 RICCARDO NOTINI, Director
15 Environmental Services
16 Catellus Development Corporation

17 ANDREW SCHAEFER, Consultant
18 Senate Office of Research

19 BOB BORZELLERI, Chief
20 Toxic Substances Control Program
21 Department of Health Services

22 VERNON D. SMITH, Superintendent
23 Sierra Conservation Center

24 E. J. BARRY, Attorney
25 Black Correctional Workers Association
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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: We're going to take up the three Governor's Appointees. After that, we will take up rule waivers.

The first Appointee is Mr. Alexander R. Cunningham, Member of the Public Employment Relations Board.

You were here a few weeks ago. We now have a letter on file from the Senate Office of Research indicating that there's no relationship between your tenure on the Toxic -- what was the name of the Board?

MR. CUNNINGHAM: Chief Deputy Director of the Toxic Substances Control Board.

CHAIRMAN ROBERTI: -- Toxic Substances Control Board and the complaint that Dr. Ghosh had registered a few weeks ago. His complaint was serious enough, and he had a legitimate enough concern with the bureaucracy on how he was treated, that it certainly warranted our looking into the matter.

Dr. Ghosh, if you wish to say anything on the matter as it might specifically relate to Mr. Cunningham, please feel free to do so, if you wish to come forward. But we have heard a great deal of testimony already.

DR. GHOSH: Good afternoon, sir. Thank you for giving me chance again to speak.

I understand that you have already some information available that --

CHAIRMAN ROBERTI: Yes.

1 DR. GHOSH: -- that there is not much relationship,
2 Mr. Cunningham, in connection with my discrimination.
3

4 As you already heard, I become a victim of gross
5 discrimination, and Mr. Cunningham was the Chief of the Toxics,
6 and regarding -- he is the person who takes the adverse action
7 against me by rejecting my probation. And he's the person
8 dropped an agreement and tried to put me in a lower position.

9 I also -- if you can give me few more minutes, I can
10 attach for you important information.

11 Can I do that, sir?

12 CHAIRMAN ROBERTI: Well --

13 DR. GHOSH: Just a few minutes.

14 CHAIRMAN ROBERTI: What I will do is, I'll take up
15 Mr. Pressley, Mr. Smith, and then I'll give you a couple more
16 minutes afterwards, Dr. Ghosh.

17 We have an endless agenda, and there are other people
18 who wish to be heard, too.

19 MS. MICHEL: You may have other people who wish to be
20 heard on Mr. Cunningham.

21 CHAIRMAN ROBERTI: Yes, that's true. Why don't we do
22 it that way.

23 There are some people here who are in favor of
24 Mr. Cunningham's nomination. Why don't they come forward, and
25 that'll give you some time, Dr. Ghosh, to review the materials.

26 DR. GHOSH: Okay.

27 I have the information ready. If you want, I can
28 read it now or later.

1
2 CHAIRMAN ROBERTI: The consultant will help you. You
3 said you wanted to review some material. Please talk to her
4 while the witnesses are coming forward.

5 MS. BOX: My name is Mary Box. I have worked for the
6 State of California since 1961. I started with the Office of
7 Emergency Services.

8 I feel very emotional right now because listening to
9 the gentleman that was just here makes me very angry.

10 CHAIRMAN ROBERTI: Please talk louder.

11 MS. BOX: Can you hear me now?

12 CHAIRMAN ROBERTI: That's much better, yes. I heard
13 your first remarks.

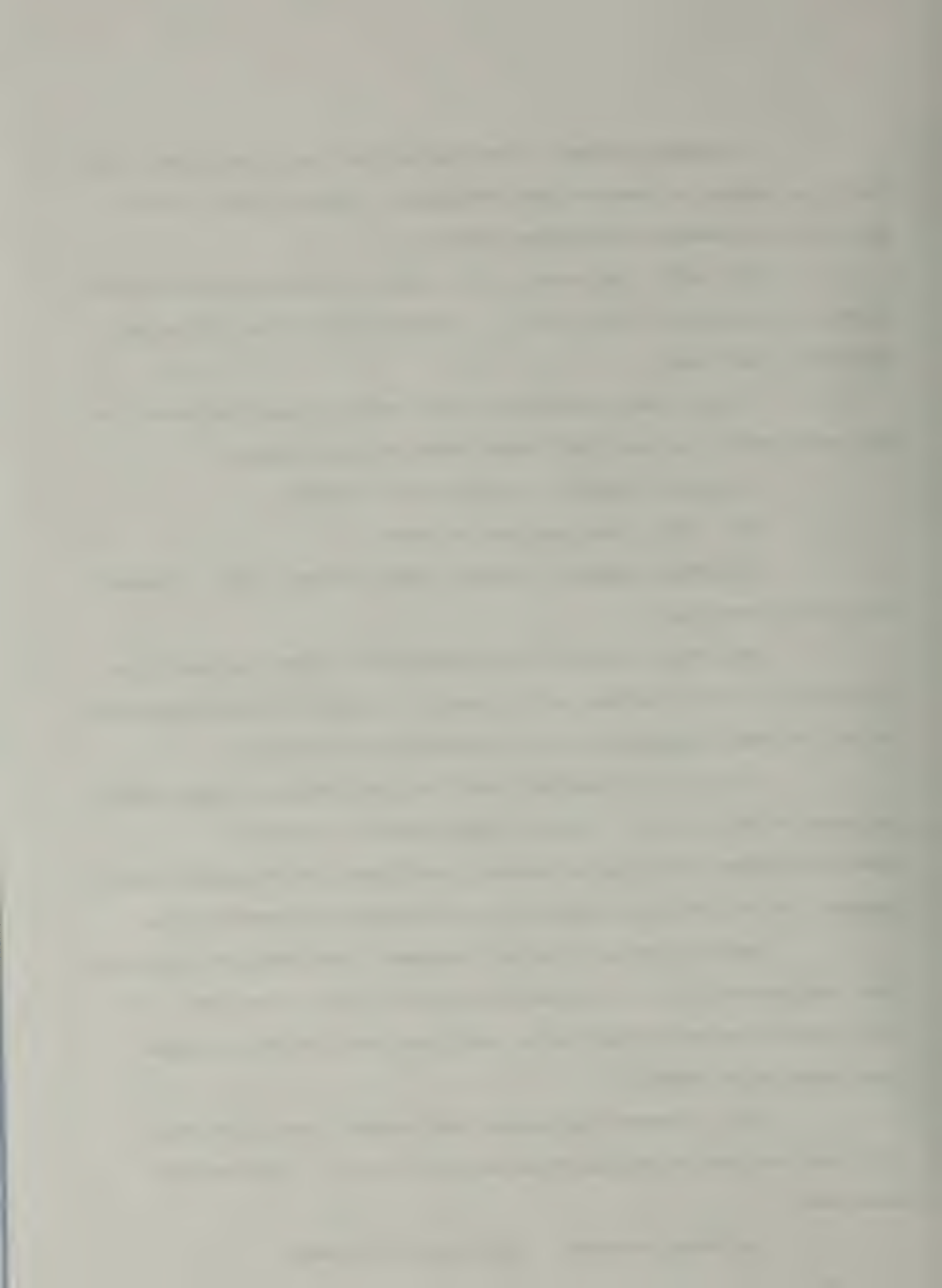
14 MS. BOX: I'm a little emotional right now about it,
15 listening to him, because if it wasn't for this man sitting next
16 to me, he was instrumental in changing my entire life.

17 I was in a clerical position for about 13 years when
18 he came to OES in '72. And he supported me in doing
19 administrative functions to where I went back to college at his
20 suggestion to get the credits to go to apply for management.

21 He gave me back my self esteem. And through this, he
22 was instrumental also in impacting on the life of my son. My
23 confidence flowed through to my son, who now, at 29, is vice
24 president of a company.

25 So, I cannot understand why anyone can think that
26 this man has any discrimination in him at all. I'm just so
27 emotional.

28 CHAIRMAN ROBERTI: Thank you very much.



1 MS. BOX: I just wanted to support him.

2 CHAIRMAN ROBERTI: It's important testimony on
3 Mr. Cunningham's behalf.

4 Is there another witness?

5 MR. HOENIG: Mr. Chairman, Senators, my name is
6 Dwight Hoenig. I'm a geologist by training, and I'm presently
7 the manager of the Northern California office of the
8 Mittelhauser Corporation, is a hazardous waste consulting firm,
9 where I've worked for the past year and a half.

10 Prior to joining Mittelhauser, I worked for the Toxic
11 Substances Control Division as the Regional Administrator for
12 the North Coast Regional Office. I held that position for some
13 five years, from 1984 through 1989.

14 I've come here to speak in support of the nomination
15 of Alex Cunningham. I think I can best do that by briefly
16 contrasting for you the differences between the Toxic Substances
17 Control Program prior to Alex's arrival and the Program which
18 exists today.

19 I know that several of the Committee Members recall
20 from first-hand the turmoil which enveloped the early years of
21 California's Toxics Program. Many of you may recall the endless
22 trail of audits, investigations, public complaints, brawls with
23 the Assembly, and personnel changes which became the hallmark of
24 what the newspapers called the, quote, "embattled Toxics
25 Program."

26 In 1985, the most often heard joke in our Emoryville
27 office was, "If the boss calls, get his name."
28

1
2 This program did not in fact lack for enthusiasm, nor
3 for the energy on the part of its staff. If good intentions had
4 been counted as accomplishments, our program would have been
5 judged successful by any measurement.

6 I guess it could be said that our Toxics Program
7 suffered from the typical problems of any start-up program: a
8 new staff which was growing at an incredible rate; a lack of
9 training; a lack of policy and procedures to guide all that new
10 staff; tremendous inconsistencies in how the program was being
11 applied across the state; all multiplied by a complete
12 uncertainty on the part of the scientific community on any
13 matter relating to toxic waste.

14 We were, of course, assisted in our efforts by
15 leagues of reporters who would seek out the most quotable quote
16 from any source who would give it. Our progress was not
17 measured by our good deeds, but by the decreased -- but by
18 decreasing the column inches of bad press in the weekly
19 tabloids. All in all, this was not a happy campground.

20 With this backdrop, you can assume that I had
21 considerable skepticism when Governor's Task Force announced
22 that Alex Cunningham was coming over to head the program. A
23 straight-laced guy with a military background, a nongeologist
24 with seemingly no environmental track record, had little to
25 recommend him in my book. I had genuine concerns about his
26 technical credentials, and a definite fear that he could be
27 overly influenced by the industrial concerns which lobby so
28 heavily in the environmental arena.

1
2 You can imagine my surprise when, in my first
3 meetings with Alex Cunningham and Dave Willis, these guys were
4 actually asking me what they could do to support my efforts.
5 They asked me to tell them what I needed to get my job done.
6 They wanted to sit down and figure out what the steps were to
7 issuing a permit; what was the cost to do it; how does a
8 contaminated site actually get cleaned up; what institutional or
9 administrative issues could they resolve to allow us to make
10 progress in this program.

11 Before long, our division began to develop a set of
12 uniform policies and procedures, committees were formed, goals
13 were set, policies were put in place to implement the program in
14 a uniform fashion. We actually developed a budget, and I could
15 actually understand it.

16 As a division, we set aside time for planning and for
17 tracking of our commitments. Our dealings with the Assembly
18 seemed to improve, and at least our logic and our actions seemed
19 to be passing the straight-face test.

20 Since this proceeding deals with a position on the
21 Public Employment Relations Board, I can also tell you that in
22 my opinion, our track record in human resource management also
23 improved under Alex's direction. For the first time, we had an
24 identifiable budget for training. We utilized State resources
25 and hired outside training consultants as well. We did not only
26 invest in technical training for new staff, but in management
27 training for people like myself. We actually spent some time
28 trying to sharpen the ax rather than continuing to just bludgeon

1 the wood.

2
3 In the area of equal employment, we implemented a
4 targeted recruiting program to attract minority engineers and
5 other professionals. We actually staff engineers to Southwest
6 schools like U.T. El Paso and New Mexico State University to
7 recruit on their campuses. And we actually did succeed in
8 bringing some of those engineers to our program here in
9 California.

10 We reviewed specific job descriptions to identify
11 opportunities to hire the handicapped. We looked to bridging
12 classes to bring qualified minorities up from office support
13 positions to professional jobs. Alex himself provided the
14 directives, incentives, and encouragement in our management
15 meetings to accomplish those goals.

16 This is not to deify the present Toxics Program as a
17 model of complete efficiency and progress. There will always be
18 a need to adjust and improve programs such as these.

19 This is also not to say that the sun rose over Camp
20 Granada simply because of the presence of Mr. Cunningham.

21 What I would say is that many things of a technical
22 and programmatic nature were improved as a result of his
23 influence and management skills. I know of and was involved in
24 decisions which Alex made which went contrary to the interests
25 of industrial lobbies, and I know of other decisions which went
26 contrary to local popular opinion. In each of these situations,
27 I believe that Alex made a decision which properly considered
28 the distribution of environmental benefits for all the State of

1 California.

2
3 From my observations of his dedication, his ethics,
4 and his management skills, I am sure that he will be a
5 tremendous asset to the Public Employment Relations Board.

6 Thank you for the opportunity to speak.

7 CHAIRMAN ROBERTI: Thank you very much, Mr. Hoenig.

8 Are there any other witnesses? Please come forward.

9 MR. CAMPBELL: Senator Roberti, Members of the
10 Committee, my name is Chris Campbell, and I am President of
11 California Partnerships, Incorporated.

12 I'm here today in my capacity as Executive Director
13 of the Southern California Coalition for Hazardous Materials
14 Management, an organization comprised of some 20 major companies
15 within Southern California who are committed to seeking balance
16 to the approach of hazardous materials management.

17 I first became acquainted with Alex Cunningham in the
18 early '80s, when he was Director of the Office of Emergency
19 Services, and I served as General Counsel to the Edmund G. Pat
20 Brown Institute of Government Affairs.

21 I have most recently had the opportunity to work with
22 Alex in his capacity as the Chief Deputy Director of the Toxic
23 Substances Control Program for the Department of Health
24 Services. I'd like to offer a very few observations with regard
25 to his service in that capacity.

26 Alex Cunningham has brought a spirit of cooperation
27 to the very real challenge of overseeing and directing a
28 hazardous materials management program for the State of

1 California, which is both environmentally safe and economically
2 sound. Nowhere has this spirit been more in evidence than
3 during the very recent efforts to effectively implement SB 14,
4 which, as we all know, is a landmark piece of legislation
5 providing for toxic substance reduction here in the State of
6 California, employing a flexible goals and standards approach,
7 thereby encouraging industry to do what industry does best, in
8 our opinion, which is to do the business of business.
9

10 In that regard, Alex Cunningham has provided a steady
11 hand in balancing the interests that are involved in this
12 flexible approach to a very critical issue.

13 We believe that Alex Cunningham will bring that same
14 spirit of balance as a member of the Public Employment Relations
15 Board. As the ultimate arbiter of disputes for administrative
16 matters involving employee relations here in the State of
17 California, the Public Employment Relations Board is an agency
18 which requires a judicious approach to the very important issues
19 which it is trusted with adjudicating. We believe Alex
20 Cunningham will be a major positive force in the Public
21 Employment Relations Board in its effort to bring about this
22 balance.

23 CHAIRMAN ROBERTI: Thank you, Mr. Campbell, very
24 much.

25 MR. CAMPBELL: Thank you, Senator. Thank you,
26 Members.

27 CHAIRMAN ROBERTI: Is there anyone else in support?
28 Is there anyone in opposition? Please come forward.

1
2 MR. DUNN: My name is Lew Dunn. I was a 30-year
3 resident of Casmalia, California, Santa Maria Valley.

4 This man sitting next to me is probably one of the
5 most dangerous men in the State of California.

6 I find it very interesting that the people that are
7 testifying today for Mr. Cunningham are people that have a
8 vested interest in what he's allowed them to do. This is the
9 man that allowed inspectors, State inspectors from the
10 Department of Health Services at the Casmalia site, to
11 continually let us be poisoned at night when the DOHS and
12 Mr. Cunningham's office knew that it was happening.

13 This is the man that has direction over Steve
14 Lavinger, which was one of his agents from the DOHS, to sit in a
15 State meeting that I chaired with the Department of Health
16 Services and told us, quote-unquote, "Up until 1985," and this
17 is 13 years after the Casmalia site was in operation, "that
18 sometimes government just has to lie to the people."

19 In the town of Casmalia, we had 20 deaths; 80 percent
20 of all our children are sick with blood diseases. My wife has a
21 cancer of blood.

22 And for him to be rewarded with an \$80,000 a year job
23 for what he's done when he was in his position at DOHS is a
24 travesty to the democracy of the people in the State of
25 California.

26 I don't see the people of Rosamond, or McFarland, or
27 Roseville, California, or Casmalia, or BKK, or McColl, the
28 children and the parents of these children, in here testifying

1 on how good of a job he did, when all they can do is go to the
2 graveyards and put flowers on the graves of their families.
3

4 When Mr. Willis told us at a State meeting not too
5 long ago that I'm on that there is no democracy as far as the
6 DOHS is concerned in environmental issues in the state, they are
7 going to make the decisions of whether the people in the rural
8 communities in the State of California get poisoned or not.
9 These are the same department at the 501 hearings of Senator
10 Torres' hearings in 1985 perjured themselves under oath, and I
11 have the documents, Senator, to prove it, when they said there
12 was absolutely nothing wrong with the Casmalia site, there never
13 has been, and they could find nothing wrong.

14 I have over 40 documents that were withheld from that
15 Senate hearing, those 501 hearings.

16 Nothing has changed. And when the gentlemen got up
17 and they say that he's cleaned up the sites in California, that
18 is a joke. They haven't cleaned up Casmalia. Casmalia is
19 leaking today. The major -- all the major toxic waste sites in
20 the State of California are leaking, and their answer to it is
21 make them bigger and let them leak more. At whose expense? The
22 expense of the people in the State of California end up having
23 to spend their tax dollars cleaning up the mess while the
24 operators of these facilities walk away with millions upon
25 millions of dollars in their pockets, and they're not held
26 accountable.

27 The DOHS has never recommended a maximum fine for any
28 contamination of any site that they've been on in the State of

1 California. They have never closed down a major facility in the
2 State of California. It's always been the people in the
3 communities that get out and say we've had enough.
4

5 Gentlemen, we strongly oppose this man being offered
6 or considered for any other job that has anything to do with the
7 protection of the public of the people of the State of
8 California.

9 Thank you.

10 CHAIRMAN ROBERTI: Thank you, Mr. Dunn.

11 Is there anyone else?

12 SENATOR PETRIS: Can I ask him a question?

13 CHAIRMAN ROBERTI: Mr. Dunn, Senator Petris has a
14 question of you.

15 SENATOR PETRIS: Were you with the Department in '86,
16 '85?

17 MR. DUNN: No, sir. I was a victim in Casmalia. I
18 lived in Casmalia when this man's people were coming out to
19 Casmalia, telling us that it was absolutely wrong, and there was
20 documents in the file that proved beyond a shadow of a doubt
21 that they were pumping cyanide in the air while we slept at
22 night illegally. He had a site inspector on the site that, in a
23 State meeting, when I asked Nick Sowell, who they promoted now
24 and he's working out of the Burbank office, told us -- when I
25 asked him, I said, "Nick, how long did you know that they were
26 poisoning us and they were pumping cyanide in the air illegally
27 while we slept at night?" He said, "Fifteen months."

28 SENATOR PETRIS: Is that the area where 80 percent of

1 the children are affected?

2 MR. DUNN: Yes, sir.

3 SENATOR PETRIS: What is their illness?

4 MR. DUNN: They have blood disorders. Their immune
5 systems have been partially destroyed. They have liver
6 malfunctions. We've had six deaths in the last 3-4 years.

7 SENATOR PETRIS: What's the source of the
8 documentation or examination of the children? Is that a county
9 health department or private doctors?

10 MR. DUNN: That was private doctors that were done.

11 When you go in -- Senator, when you go into any town
12 that has 160 people in it, and you've got 80 percent of those
13 people sick, that's not normal.

14 SENATOR PETRIS: What is their response to that?

15 MR. DUNN: The DOHS?

16 SENATOR PETRIS: Yes.

17 MR. DUNN: They're not significant; it's minimal.
18 You don't count.

19 You can shake your head all you want, Mr. Cunningham,
20 but we could go through document after document on every site in
21 Rosamond, in McFarland, and those kids and those parents are
22 told that their people are not significant.

23 And what they do, how they try to justify it, if I've
24 got two blocks of homes, and 80 percent of those people are sick
25 in those two blocks of homes, you've got a problem. What they
26 do is, they take the whole county then, and they disperse it
27 over the whole county and say that's not significant because
28

1 it's a small amount compared with the major population.

2 But when you've got three or four blocks of people
3 that are sick and dying in one area, you have a problem.

4 SENATOR PETRIS: Thank you.

5 MR. DUNN: Thank you.

6 CHAIRMAN ROBERTI: Next witness, please.

7 MS. PAXTON: My name is Lynda Loie Paxton, and I'm
8 from Oxnard, California, and I flew up last night specifically
9 to speak to you.

10 I live, or did live on -- I moved out about a year
11 ago -- an abandoned toxic waste dump which has identified the
12 responsible parties. We are in a lawsuit. I have documentation
13 that the person that is an employee and directly answerable to
14 the Department of Health Services was in communication with
15 defendants in our lawsuit, supplying information that was
16 detrimental to us and beneficial for them.

17 It's my opinion that until the Department of Health
18 Services demonstrates a true concern for health, welfare and
19 justice for all of its citizens that no employee should deserve
20 such a position that has such authoritarian and dictatorship,
21 and impacts the children, which this, if it's my understanding's
22 correct, he will impact the children in our school systems.

23 I would also direct your attention to the fact that
24 the Auditor General's Office came out with a report that said
25 that the Department of Health Services fails to handle its funds
26 properly and provides jobs or awards contracts without there
27 being any bidding to previous employees of the Department. And
28

1 I would just like for you to be aware that we have people's
2 health and welfare in concern, and I don't see the people in
3 this position having that concern.
4

5 Gary Hart, Senator Gary Hart, sent communication to
6 Dr. Kizer about some of the things that are going on. And Gary
7 Hart has been the only person that I've talked with that's
8 truly demonstrated a caring and physically getting out there and
9 trying to help the citizens with these toxic situations.

10 Thank you.

11 CHAIRMAN ROBERTI: Thank you very much.

12 Next witness, please.

13 MS. MILLINGTON: Good afternoon. My name is Marlene
14 Millington, and I'm from Amador County.

15 I want you to know that I'm living in between a toxic
16 landfill and an incinerator.

17 This landfill's been leaking for three years. I have
18 documentation to prove it. And the only thing the DOHS has done
19 is warn them that they're going to put them on a list with other
20 landfill sites that haven't met compliances. That's how they
21 deal with it.

22 What they're trying to do now is enlarge our landfill
23 by five times its size so that they can say they've contained a
24 leachate, which is off the site now, contains hazardous wastes.
25 It's heading southwesterly toward a creek that's a half a mile
26 away. And so, what they want to do is enlarge it by five times
27 so they can say they've got it under control.

28 The incinerator plant is a quarter mile from my

1 house. They're bringing in all kinds of material at night and
2 burning it, along with this lignite. When I talked to the
3 departments, how they're managing to monitor the air quality,
4 they are allowing these sites to monitor themselves. And I
5 said, "So how do you know if they're ever exceeding pollution
6 standards?" The remark to me was that, "They'll call us if they
7 ever exceed."

8
9 So, the DOHS has allowed these big companies to do as
10 they please at the expense of our health.

11 Now, not only that, but with this leachate that's
12 off the site now, they've proved that it's going back into the
13 water system. We all live on wells out there. Not one person
14 has been warned about the contaminated water. We have people
15 that have died of cancer. Their wells, the scum that was
16 floating on them, they had to turn them off themselves. They
17 had no idea this was going on.

18 We were under the assumption that we had -- their
19 term was sanitary landfill, and we assumed that to be the a
20 refuse for natural garbage. We find out that they're allowed to
21 bring in anything as long as the trucks pay when they come in
22 the gate. It's mixed in with the daily garbage. And then we're
23 allowed to go out there and dump our garbage on top of it. I
24 have documentation to prove it.

25 Now, I want you to know that up on the top of the
26 site they bring in, daily, sludge from septic systems. We live
27 in a rural community. It's held in a pond, all of this bulk.
28 It's then supposed to have the liquid go down into what they

1
2 call a clear pond, which only means that it's divided itself
3 from the heavy wastes, and they aerate it back up into the
4 system, day or night. The DOHS has allowed this to happen.

5 Is there anybody here that would like to hook up
6 their hose to their septic and water your garden with this? And
7 the DOHS has allowed this to go on.

8 I was on the site the other day, and because the main
9 pond was so full, they hooked up a pump right up to the main
10 pond and let the sprinklers go all day to get rid of the liquid
11 waste that's sitting up there. And that, again, is okay with
12 the DOHS.

13 We're dying out there.

14 SENATOR CRAVEN: How many people have died?

15 MS. MILLINGTON: We have at least four documented
16 people that have contracted cancer and died.

17 SENATOR CRAVEN: Yes, but you document the people,
18 you mean that they really have been living people. They're
19 documented as people.

20 But you haven't documented that the cause of the
21 death was a result of what you talked about?

22 MS. MILLINGTON: Well, that's interesting. They
23 never say that it's the result of it, but --

24 SENATOR CRAVEN: Well, they probably don't for good
25 reason.

26 MS. MILLINGTON: I'd say that, too. Nobody wants to
27 take any responsibility for it.

28 SENATOR CRAVEN: Tell me, dear, what county do you

1 live in?

2 MS. MILLINGTON: Sir, I live in Amador County.

3 SENATOR CRAVEN: Does Amador County have an Air
4 Pollution Control Board?

5 MS. MILLINGTON: Yes, sir. They are the ones that
6 said they are allowing these sites to monitor themselves, and if
7 they exceed the air quality, then the site's supposed to call
8 in. And I said, "So, has the site ever called in?" And they
9 said, "Oh, of course not."

10 SENATOR CRAVEN: As far as them allowing them to
11 monitor themselves, I find that to be somewhat diametric to law
12 governing air pollution quality control.

13 MS. MILLINGTON: I agree, sir.

14 SENATOR CRAVEN: How about water quality control? Do
15 you have a water quality control group up there?

16 MS. MILLINGTON: Yes, sir. They have wells on the
17 site, and they have monitored some of their wells on the site,
18 which, coincidentally, are not anywhere near the leachate plume
19 that's leaking from the site. But they have not come out to any
20 of the homeowners who have wells and checked any of ours.

21 SENATOR CRAVEN: Have you taken your contentions or
22 allegations to either of the organizations that I have
23 mentioned?

24 MS. MILLINGTON: Yes, sir, we have.

25 SENATOR CRAVEN: What did they tell you?

26 MS. MILLINGTON: They said they're working with them.
27 I said, well, they've had violations for eleven years, continued
28

1 violations for eleven years.

2
3 SENATOR CRAVEN: In water?

4 MS. MILLINGTON: In water, in air, and the
5 contaminants they're bringing in. The way they're handling the
6 waste that's coming in.

7 And they've never even been fined. I said, "What are
8 you doing?" She said, "We are working with them." I said, "For
9 eleven years?" And she said, "As long as they continue to prove
10 to my satisfaction that they are trying to do something, then we
11 leave them alone." And I said, "So, well, how do you prove that
12 you're doing something if the daily garbage is supposed to be
13 covered, and you're not even doing that? Animals are supposed
14 to be covered, and you're not doing that."

15 And we live in a rural community, but there's only
16 three of us -- 300 of us, so that, you know, that doesn't count.

17 SENATOR CRAVEN: You mean in the vicinity?

18 MS. MILLINGTON: In the vicinity of the landfill and
19 the incinerator.

20 SENATOR CRAVEN: Well, there was only three of you --

21 MS. MILLINGTON: Three hundred. There's three
22 hundred of us.

23 SENATOR CRAVEN: I find that very, very strange.

24 MS. MILLINGTON: Yes, sir. I do, too.

25 SENATOR CRAVEN: It's diametric to rule, regulation,
26 and one thing and another.

27 You said they've been in violation for 11 years?

28 MS. MILLINGTON: Sir, I have the documented proof.

1 I'd be happy to give it to you.

2 I got it out of their own files. Sir, they don't
3 even know what they have in their files. I've gone there and
4 copied them. They don't even know what they've got I mean,
5 they have acknowledged all of my accusations in their own
6 paperwork.

7
8 SENATOR CRAVEN: Have you ever talked to Dr. Kizer?

9 MS. MILLINGTON: Yes, sir, we have.

10 SENATOR CRAVEN: And did he give you any --

11 MS. MILLINGTON: No, sir, no satisfaction.

12 SENATOR CRAVEN: No satisfaction at all?

13 MS. MILLINGTON: No, sir. They don't live there.

14 It's okay.

15 SENATOR CRAVEN: He didn't say that to you, I'm sure.

16 MS. MILLINGTON: No, sir, that's just the attitude
17 we're getting. They don't live there, and it just must be me,
18 as a hysterical mother who has children that are ill with
19 respiratory problems. They're on antibiotics more than they're
20 off, and they are nine and eleven.

21 SENATOR CRAVEN: Thank you very much.

22 MS. MILLINGTON: Thank you.

23 CHAIRMAN ROBERTI: Thank you very much.

24 Is there anyone else here in support or opposition?

25 MR. SMITH: Mr. Chairman, Members of the Committee,
26 thank you. My name is Ted Smith. I'm the Executive Director of
27 the Silicon Valley Toxics Coalition, where I've been working for
28 the last eight years.

1
2 I'm also the Vice President of the Toxics
3 Coordinating Project, which is the California Toxics Coalition,
4 and I'm the Vice President of the National Toxics Campaign.

5 I come from San Jose, which is in the heartland of
6 Silicon Valley, where we have 29 Superfund sites, which is more
7 than any other place in the country.

8 I wanted to just let you know that the Department of
9 Health Services, in spite of some of the testimony you've heard,
10 has been the least helpful of any agency that we've ever had to
11 deal with. They have been nonresponsive, unresponsive, and
12 basically have not been an active, positive force in our
13 community at all.

14 But I wanted to talk to some specific policies that
15 have come about during Mr. Cunningham's tenure at the Department
16 of Health Services. I think you have to ask, the first question
17 is: what are his qualifications for appointment to the job at
18 the Public Employment Relations Board? And since, in going
19 through his resume, at least, and everything I've heard, there
20 are no apparent qualifications, I would think that there would
21 need to be something in his tenure in his recent job that would
22 particularly recommend him for a job where he really has no
23 other qualifications.

24 In evaluating the record at the Department of Health
25 Services, I really can't find anything that would distinguish
26 him for this job, that's obviously out of his own experience.

27 Within the Department of Health Services, he was the
28 main person in charge of implementing the Tanner Hazardous Waste

1 Planning Plant process. It went on in all of the counties
2 throughout the State of California. And in my experience, I
3 have never seen such a program be botched. All of the counties
4 in the state united against the State Health Department in the
5 way this program was implemented because of the rigid way in
6 which it was brought down. It became an issue of the counties
7 and the cities against the state and led to tremendous
8 loggerheads, tremendous waste of energy. Even though the local
9 communities were willing to go forward with the concept, which
10 they called fair share, the state nevertheless said no, we we
11 don't want you to do that. We want you to plan for over
12 capacity.
13

14 That's one of the main reasons why the environmental
15 organizations all around the state have submitted letters to
16 you, which should be in your packets, opposing this nomination.
17 It was a policy that was very, very poorly implemented, and we
18 think has been to the great detriment of the people throughout
19 the state.

20 The policies that have been coming out of the State
21 Department of Health Services under his tenure have been pushing
22 for more siting rather than toxics reduction. In that regard,
23 one of the other main policies that has been -- being pushed is
24 this rush to burn through implementation of incineration. This
25 is a dangerous, untested technology. And in spite of all that,
26 it's been pushed on local communities, even without
27 environmental impact reports. And in a state where, as you
28 know, we require an EIR for the building of a new parking lot,

1 under Mr. Cunningham's leadership, the State Department of
2 Health Services took the position that it was not required to do
3 an environmental impact report before building a new hazardous
4 waste incinerator. And I think that's really an inexcusable
5 kind of policy for a state that purports to have progressive
6 policies to adopt.
7

8 Lastly, or thirdly, I'd like to talk about the
9 question of management. We've been seeing a number of new
10 policies coming down, such as permit by rule and self-
11 certification, which is going to get the state even less
12 involved in regulating the serious problems of hazardous waste
13 by allowing the private companies themselves to even more take
14 it into their own hands to self-certify the job that they're
15 doing, and to provide even less oversight from the state.

16 I wanted to quote to you in particular a letter which
17 is in your packet from Penny Newman of Concerned Neighbors in
18 Action. She has been the leader of the fight down at
19 Stringfellow for many, many years, and she says in her letter:

20 "Has Mr. Cunningham's leadership
21 resulted in a better managed
22 program? A recent audit by EPA's
23 Office of the Inspector General
24 found \$3.8 million, [which is] a
25 fourth of the Superfund money state
26 health officials spent at
27 Stringfellow in the last five years,
28 was spent unreasonably or cannot be

1 traced at all. It further
2 recommends that the state repay at
3 least \$2.1 million of the money."
4

5 She goes on in this letter to say:

6 "Our objections to Mr. Cunningham's
7 appointment go beyond the
8 experiences at Stringfellow. We
9 have watched him chair public
10 hearings on proposed facilities in
11 which his disregard and disdain for
12 concerns expressed by local people
13 were evident. He led the way in the
14 permitting process not simply as the
15 objective head of a permitting
16 agency but more as the champion for
17 the corporations, as if he had a
18 personal stake in the success of the
19 siting"

20 She goes on to cite an example such as that down in La Jolla,
21 where there was an incinerator siting where, she says,

22 "Mr. Cunningham was chastised by
23 local officials for being more of an
24 advocate for the company than an
25 unbiased state official."

26 SENATOR CRAVEN: May I interrupt you at this point?

27 MR. SMITH: Sure.

28 SENATOR CRAVEN: Are you referring to the Torrey

1 Pines incinerator?

2 MR. SMITH: That one was in La Jolla.

3 SENATOR CRAVEN: That's in La Jolla.

4 MR. SMITH: Yes.

5 SENATOR CRAVEN: That's the one you're referring
6 to?

7 MR. SMITH: Yes.

8 SENATOR CRAVEN: And he was chastised for that?

9 MR. SMITH: Yes.

10 And there's also another letter here --

11 SENATOR CRAVEN: He wasn't chastised by the federal
12 government. He wasn't chastised by the state government. He
13 wasn't chastised by the county government or the Air
14 Pollution Control.

15 I'm just wondering who had chastised him, to whom
16 you have referred?

17 MR. SMITH: Well, that resulted in a lawsuit by
18 local government against the state, is my recollection.

19 There's also a letter here --

20 SENATOR CRAVEN: No, the local government did not
21 sue.

22 MR. SMITH: The Environmental Health Coalition of
23 San Diego, which is the main environmental health
24 organization there, also refers to this and says,

25 "In May [of] 1988 Mr. Cunningham
26 came to Escondido to meet with
27 county and city officials and the
28

1 community and promised that clean-up
2 would start immediately. Two months
3 later, the community was informed
4 that the bond act monies designated
5 for this clean-up had been
6 exhausted."

7
8 Even though he promised that they would be available.

9 SENATOR CRAVEN: That's the Chatham site, which, of
10 course -- well, he can speak to that.

11 There's a couple of questions I wanted to ask you.

12 What type of an engineer are you?

13 MR. SMITH: I'm not an engineer.

14 SENATOR CRAVEN: What kind of a toxicologist are
15 you?

16 MR. SMITH: I'm an attorney by training.

17 SENATOR CRAVEN: Oh, you're an attorney?

18 MR. SMITH: Yes.

19 SENATOR CRAVEN: Then you would be very
20 knowledgeable in the field of toxics, wouldn't you?

21 MR. SMITH: I have studied the field for the last
22 eight years, but I don't pretend to be a toxicologist.

23 SENATOR CRAVEN: Are you a physicist?

24 MR. SMITH: No, I don't pretend to be.

25 SENATOR CRAVEN: Biologist?

26 MR. SMITH: What I do try to specialize in is the
27 operation of government and its effectiveness.

28 SENATOR CRAVEN: The reason I bring it up is the

1 fact that you wanted to criticize Mr. Cunningham's
2 credentials as being inappropriate, and I'm requesting yours
3 as being inappropriate for some of the statements that you've
4 made.
5

6 MR. SMITH: I haven't been appointed to an \$88,000
7 a year job.

8 SENATOR CRAVEN: That's irrelevant.

9 MR. SMITH: Oh, I think that's the point here.

10 SENATOR CRAVEN: The \$88 or \$88,000 has no bearing.

11 MR. SMITH: This is an appointment with public,
12 taxpayer money, and the question is whether the person is
13 qualified. It has nothing to do with my own qualifications.

14 SENATOR CRAVEN: You pass judgments as if you have
15 qualifications.

16 MR. SMITH: I am raising questions and representing
17 a number of other people from around the state who have very,
18 very similar kinds of experiences, and have had many of these
19 same questions themselves. I'm trying to share that with
20 you.

21 SENATOR CRAVEN: Yes, and the majority of them are
22 not close enough to the problem to understand what it is.

23 MR. SMITH: You've just heard from several people
24 who are very close to the problem and I think understand it
25 well.

26 SENATOR CRAVEN: I understand that, and I don't
27 necessarily agree with everything they've said.

28 MR. SMITH: If I can just finish, the last thing I

1 would like to touch on is the question of the discrimination,
2 which is certainly an issue that has a good deal of bearing,
3 looking toward the new job. I think the issues that have
4 been raised seem certainly substantial to me, and I do hope
5 that those are given a very fair and full review by this
6 Committee.

7
8 Let me just conclude by saying that I hope that
9 this will not be a case of just conducting business as usual,
10 and that you'll give very close scrutiny to this nomination.

11 CHAIRMAN ROBERTI: Thank you very much.

12 Is there anyone else in the audience?

13 MR. ROY: Good afternoon, honorable Senators. My
14 name is Arun Roy. I'm an Associate Waste Management Engineer
15 for the Toxic Substances Control Program, the Region 2
16 Office, at 700 Heinz Avenue, Berkeley.

17 I do not have anything personal against
18 Mr. Cunningham. I hardly know him. It is only the system,
19 the apparatus, that has been dealt with him at the helm of
20 the administration of the Department that is so
21 discriminated, arbitrary, and prejudicial to us ethnic Asian
22 Indians that I resent and complain about.

23 To be very brief, I'm a professional civil engineer
24 with considerable experience. I was interviewed, selected,
25 offered a position, then the offer was withdrawn.

26 At this point I had to take the matter up with the
27 Civil Rights Department to get the offer reinstated. Along
28 the line, my start date got delayed unduly.

1 It was, I feel, with quite some reluctance and
2 resentment that I was admitted to the position that I am
3 currently holding.

4 Now again, after serving satisfactorily for 2½
5 years, I sense there are forces of discrimination at work in
6 the name of progressive discipline to force me to quit out of
7 desperation, humiliation, disgust.

8 With Mr. Cunningham as a member of the Public
9 Employment Board, I feel future progress of us ethnic
10 minorities may really be in jeopardy in the area of public
11 employment.

12 CHAIRMAN ROBERTI: Senator Craven.

13 SENATOR CRAVEN: This is Dr. Ghosh, is it not?

14 MR. ROY: No, my name is Arun Roy.

15 SENATOR CRAVEN: I'm sorry, I didn't get your name.

16 MR. ROY: My name is Arun Roy. I'm an Associate
17 Waste Management Engineer with Region 2 of Toxic Substances
18 Control Program.

19 SENATOR CRAVEN: Very good. I'm sorry, I didn't
20 hear you initially. Excuse me.

21 CHAIRMAN ROBERTI: Are there any other witnesses?

22 MR. HATAYAMA: Mr. Chairman, Senators, my name is
23 Howard Hatayama, and I'm currently the Regional Administrator
24 for the Toxic Substances Control Program in the Bay Area.

25 I've been sitting in the audience, listening to
26 testimony today. And I think I feel very strongly that
27 certain things that have been said regarding the
28

1
2 responsiveness of our Department under Alex's guidance and
3 leadership, particularly in the area which I'm responsible
4 for, which is the San Francisco Bay area, needs to be
5 clarified.

6 As you know, there is considerable concern and a
7 lot of debate over the overlapping jurisdiction between our
8 Department and the Regional Water Quality Control Boards. the
9 federal government. We have, indeed, tried to alleviate some
10 of that overlap by making an agreement with those agencies as
11 to what each agency would be responsible for. That
12 particular agreement calls for the regional board to have the
13 lead responsibility for many of the problems that have been
14 alluded to in the Silicon Valley, and we have taken a
15 secondary role.

16 When we have become involved under Alex's
17 leadership, we did go out and actually take actions to solve
18 problems rather than to study them, a case in point being the
19 Lorentz Barrel and Drum site.

20 We also conducted extensive studies of the
21 questions related to exposure to contaminated groundwater
22 related to the IBM site and the Fairchild-San Jose sites.

23 I think that we have been responsive, and I wanted
24 to make that statement today..

25 I am certainly willing to answer any questions that
26 you may have regarding my area of responsibility. That
27 completes my statement.

28 CHAIRMAN ROBERTI: Thank you very much.

1 Any questions? Senator Petris.

2 SENATOR PETRIS: According to the information given
3 to us, first of all, I don't know how long Mr. Cunningham has
4 been there.

5 How long were you in the toxics thing?

6 MR. CUNNINGHAM: About 3½ years.

7 SENATOR PETRIS: Starting when?

8 MR. CUNNINGHAM: In March of '86, until two days
9 after the earthquake, when I was pulled out for other duties.

10 SENATOR PETRIS: At the end of January, '86, the
11 U.S. EPA canceled the state's authority to administer federal
12 hazardous waste management programs that were created by
13 federal statute due to various deficiencies in the Department
14 of Health Services in carrying out their duties.

15 One of the things they cited was weak enforcement.
16 Now, that's prior to his time. He started in March.

17 Later, in two different reports, the legislative
18 Auditor General also cited that kind of deficiency, as well
19 as others, and most recently in the 1989-90 budget. Up to
20 this time, the authority to administer these programs for the
21 federal government has not been restored.

22 Were you aware of that?

23 MR. HATAYAMA: Yes. I was aware of that, and
24 indeed, at this point in time, the state is not authorized to
25 carry out certain elements of the federal program.

26 MR. CUNNINGHAM: Senator, may I address that,
27 please?
28

1 SENATOR PETRIS: Yes. Can you enlighten us on
2 that?
3

4 MR. CUNNINGHAM: Yes, sir.

5 You're correct that about two months prior to my
6 arrival at the Toxics Program, the state lost what is called
7 interim authorization basically to run the base program for
8 EPA.

9 California -- one of the reasons that we lost it,
10 basically the program was greatly understaffed at the time in
11 a lot of areas: site mitigation, particularly surveillance
12 and enforcement, permitting, right across the board.

13 SENATOR PETRIS: Whose staff are you talking about?
14 The state's staff?

15 MR. CUNNINGHAM: Yes, sir, the Toxics Program
16 staff.

17 And as a result of that --

18 SENATOR PETRIS: Why was it understaffed?

19 MR. CUNNINGHAM: Well, it just, you know, when this
20 program started clear back in 1972 with six people, and it
21 grew through the years, when this administration took over
22 in 1983, it had 192 people in the program. By the time I got
23 there, it had increased from 192 to 335.

24 Because of all these problems that surfaced in '85
25 and '86, the Legislature and the administration gave it a
26 much need shot in the arm with staff. That was a joint
27 effort between the Legislature and the administration. And
28 basically, then a lot of good things started happening.

1 I'm not taking credit for it, because I was given
2 the support in order to make some things happen.

3
4 What happened before we lost the authority, one of
5 the reasons we lost the authority, California did not have
6 what is called administrative penalty authority. In other
7 words, we would go out, and we would conduct inspections, but
8 we didn't have the authority to issue fines on the spot
9 Because of some legislation that Senator Torres carried a few
10 years ago, we do now have that authorization.

11 SENATOR PETRIS: Excuse me.

12 How can the feds cancel us out for weak enforcement
13 if we didn't have the tools of enforcement? Are those tools
14 in the federal law or in the state law?

15 MR. CUNNINGHAM: Well, it's a federal program, and
16 -- but the state, if -- the feds are saying to the state:
17 we're giving you an interim authority to run the program, and
18 you prove to us you can do it. And the state didn't have the
19 horses to do it, then they withdrew the authorization. They
20 did this in a lot of states. This was a blanket
21 authorization that was given many states, and it was
22 withdrawn January, 1986.

23 If I can continue, now that the forces are in
24 place, we now have the most aggressive enforcement program in
25 the nation, this according to a recent GAO report.

26 SENATOR PETRIS: They restored authority?

27 MR. CUNNINGHAM: We're in the process, and I'm
28 coming to where we are in that, sir.

1
2 In the last couple of years, we've issued and
3 collected over \$20 million in fines. Under no circumstances
4 would we have been able to get authorization in '86 because
5 of the conflicting laws, the federal laws versus the state
6 laws.

7 The reason for that, you, the Legislature, have
8 made the state's program a tougher program, and I think
9 rightly so, than the federal program. There are certain
10 wastes, for example, in California -- and please, I could be
11 wrong on a few facts here. I've been away from the job now
12 since October of last year -- but there are several wastes in
13 California that are called "California-only wastes."

14 Other states would simply take the federal EPA
15 regulations and adopt them in whole or in major parts, and
16 therefore, the laws matched, and they were given the
17 authorization.

18 California said no, your laws, your regulations are
19 not strict enough to carry out the laws that our Legislature
20 passed. And therefore, what we did was to put together a
21 team of people from EPA, the Toxics Program, the Attorney
22 General's Office, and the Water Board -- and these were
23 lawyers plus program people -- to iron out the differences
24 in these regs and make sure that California's regs would be
25 compatible with the federal regs, and where they were
26 different, they would be acceptable to the feds.

27 We knew that when we bit this chunk, it was going
28 to take three to four years to get the authorization, because

1 the authorization we lost in '86, Senator, was the
2 authorization to run the 1980 EPA programs, the RCRA
3 authorization.
4

5 Congress, in 1984, passed what was called the HSWA
6 amendments, which was new set of criteria. So, many states
7 then had to go back and reapply to get the HSWA amendments,
8 the authorization to run the program consistent with the
9 federal HSWA amendments. Only six states today have
10 authorization to run the EPA program with the '84 HSWA
11 amendments.

12 California has just recently received back from OAL
13 1400 pages of regulations that have been through the public
14 hearing process, have been their staff chops on it, has gone
15 to OAL. They've come back, and I understand that they had
16 some comments, but not substantive comments. I'm told by the
17 Toxics Program people today, out in the hallway, that this
18 bundle should be going to EPA in November in order to obtain
19 the authority not only to get the authorization that we lost
20 in '86, but the authorization to run the HSWA program, which
21 only six states have.

22 I would bet that California will have full
23 authorization to run the entire EPA program within the next
24 year.

25 In a sense, we are running the EPA program now, but
26 the difference, when you don't have authorization -- and I'm
27 sorry for the long explanation -- when you don't have the
28 authorization, instead of taking an action and automatically

1 having it bought off by EPA, you take the action; you have to
2 send it up to them, and the bless it, if you will. So,
3 California is running the program because EPA doesn't have
4 the staff to do it, so we are conducting inspections, you
5 know, consistent with the federal system as well as making
6 sure that our own system is met.

7 I'm sorry for that long answer.

8 SENATOR PETRIS: It's all right. That's fine.

9 MR. CUNNINGHAM: Within the next year, they'll have
10 authorization.

11 SENATOR PETRIS: There's another part of the recent
12 legislative oversight on the Superfund that disclosed that
13 while we had close to \$200 million available over the past 4½
14 years, only 40 sites have been certified as cleaned out of
15 more than 400 that have been identified as being out there.

16 Can you tell us why that is? Is that a shortage of
17 personnel also, or just a complicated --

18 MR. CUNNINGHAM: No, sir, that's -- it's a very
19 complicated process. And as Mr. Smith mentioned, Silicon
20 Valley has a lot of those types of sites, and a lot of them
21 relate to groundwater issues.

22 To measure the success of clean-ups simply by using
23 certification, I think, does a disservice to the program,
24 because what happens -- and one point I can address because
25 Mr. Smith brought it up, and that was the Chatham Brothers
26 site in Escondido, I only have one copy, but I'd like to pass
27 that around, if I may. That shows the site from start to
28

1 finish in six photographs.
2

3 That site is cleaned up now to where there is no
4 public health threat. They could put a Little League site on
5 that, and if my son was young enough, I'd have no problem
6 with him playing on a ball field on that site.

7 However, technically, there is absolutely no threat
8 to public health at that site any more.

9 The top two photos, Senator, show what it looked
10 like earlier. The bottom two photos show the clean fill
11 being brought in, and then the finished product.

12 That site is cleaned up, but technically it is not
13 certified because there's still a groundwater problem. They
14 had to get the soil part cleaned. Now they can take care of
15 the groundwater problem.

16 Mother Nature takes a long time in taking care of
17 groundwater. We put a treatment facility down in North
18 Hollywood to treat groundwater last year, but it'll be
19 several years before the groundwater is totally cleaned up.
20 You just -- that's a process you just can't hurry.

21 So, while the report said 40 sites -- and by the
22 way, that's now 68 sites, because I think that was -- and I
23 saw that report, that was as of the close of FY '89, they
24 said 40 sites cleaned up; there were another 28 sites cleaned
25 up last year, so it's now 68 sites that are officially
26 certified as cleaned. There were 64 more where removal
27 action was taken, such as at the Chatham site, and there are
28 a couple of hundred that are well along the way in the

1 process because of the troops that you folks and the Governor
2 gave us within the last couple of years.

3
4 It takes a long time. It's the most frustrating
5 job I've ever had in my life. I come from an Emergency
6 Services background, where short-time is end of the day, or a
7 couple of days, and long-term is a couple of weeks. And when
8 I walked in the door at this program, they started talking a
9 short-term clean-up of two to three years, and long-term of
10 15-20 years, I thought I was going to go nuts.

11 But that's the complexities of the program:
12 chasing these groundwater plumes.

13 The Legislature says we have to do the studies
14 before we start the clean-ups, and the Legislature directs
15 that we look for permanent remedies rather than quick fixes.
16 And that's the frustrating part, but that's the law, and
17 that's what I'm charged with carrying out, or that's what I
18 was charged with carrying out.

19 Sorry to get carried away.

20 SENATOR PETRIS: Do you favor that policy of
21 permanent correction over quick fix?

22 MR. CUNNINGHAM: I favor looking for a permanent
23 resolution over a quick fix. And I say that because
24 Stringfellow was mentioned earlier.

25 Stringfellow's the most notorious toxic waste site
26 in California. Ten years ago, somebody said, "Gee, we can
27 fix that thing quick. It's got a bedrock base, and all we
28 have to do is go in there and put a \$3 million cap on the

1 thing."

2 Well, earthquakes come along, and bedrock all of a
3 sudden isn't so solid, and the stuff leaks down into the
4 groundwater, and now we're chasing the plume. And that's
5 going to be a site that just takes time.
6

7 It's so frustrating I get wrapped up when I talk
8 about it, but the problem there was, they went for a quick
9 fix.

10 Now, the quick fix that I go for and that I
11 support, and that I think everybody supports, is where there
12 is an immediate health risk. You go in and you take care of
13 the immediate health risk, and you remove the health risk.
14 If that means hauling away several truck loads of
15 contaminated soil because it's exposed to the atmosphere and
16 kids can be affected by it, you do that. And then you try to
17 go back later and do the permanent fix. But you have to do
18 the quick fix in that case. That's a different kind of quick
19 fix than what they tried at Stringfellow.

20 SENATOR PETRIS: So, in some cases it means both?

21 MR. CUNNINGHAM: Yes, sir.

22 And what happens there is, we end up using bond
23 fund money to do those immediate removal actions that are
24 threats to public health, and then we -- you know, in some
25 cases we can't recover that bond fund money. There is no
26 responsible party. In other cases, we go after responsible
27 parties.

28 For example, there was a recent magazine article

1 that credited the Department that, by spending \$31 million of
2 bond fund money, we were able to leverage \$394 million of
3 private party, responsible party money, that went in and
4 cleaned up the sites under our jurisdiction and supervision,
5 but using their monies. And what that did, that made a 12-1
6 return, ratio of return, on the investment for us, and the
7 bond fund, which you folks passed in 1984, that was supposed
8 to last two years, by doing it this way, we were able to make
9 that 100 million last six years.
10

11 SENATOR PETRIS: You mentioned fines.

12 MR. CUNNINGHAM: Yes, sir.

13 SENATOR PETRIS: How much was that, 40 million? Or
14 20-40 million?

15 MR. CUNNINGHAM: Twenty million in fines actually
16 collected, in the till, in the last couple of years. Last
17 year alone was 7 million.

18 SENATOR PETRIS: Was that an increase over prior
19 years? I assume it was.

20 MR. CUNNINGHAM: I believe it was a slight
21 increase, but I know that if it was, it wasn't much, because
22 I know a lot of the 20 million, Senator, happened in the last
23 four years, because we just didn't have the authority to
24 assess the fines before I came on board.

25 SENATOR PETRIS: What about reimbursement from the
26 responsible party for state costs? I understand, under that
27 program, which is authorized in the Superfund part, out of
28 107 million in state expenditures, we only got 7.3 back

1 through fiscal year '88-89.

2 MR. CUNNINGHAM: Yes, sir.

3 SENATOR PETRIS: Can you comment on that?

4 MR. CUNNINGHAM: Yes, I can.

5 That came up in a recent hearing, and staff gave me
6 some data on a whole bunch of things that might come up. And
7 what I have on that is that the total amount billable was
8 \$43 million, 43.6 million; the total amount we could have
9 collected.

10 SENATOR PETRIS: Not 107?

11 MR. CUNNINGHAM: No, sir.

12 Total cost recovery billable was 43 million.

13 From that -- and there are people from the Toxics
14 Program that are here that may be able to shed some light on
15 this -- but 25 million of that 43 million has actually been
16 billed. The bills have been sent out; 10 million of that --

17 SENATOR PETRIS: Are the checks in the mail?

18 MR. CUNNINGHAM: No, no.

19 Ten million of that has actually been collected.
20 We've actually recovered 10 million.

21 So, the 7 million figure is now up to 10 million.

22 SENATOR PETRIS: For what period? For the last
23 couple of years?

24 MR. CUNNINGHAM: This is as of June 30th of this
25 year, so just -- you know, that 7 million figure is now up to
26 10 million. And there's 18 million that's not billed,
27 Senator, and let me tell you where they come from.
28

1
2 Number one, in some instances, the people that
3 contaminated the site are bankrupt, so we bill them and it
4 doesn't do any good.

5 Some others have been referred to legal, and some
6 of those are in negotiation.

7 There's another handful that are monies that we've
8 spent on federal military facilities, and I was --

9 SENATOR PETRIS: That's not reimbursable?

10 MR. CUNNINGHAM: Yes, sir, it is, but before we get
11 reimbursed for that, we must sign a memorandum of agreement
12 with the Department of Defense.

13 And I might say that I chaired a committee for --
14 excuse me, a committee of people in the same position I'm in,
15 working with Defense, working with the National Association
16 of Hazardous Waste Management Officials, and that program, we
17 developed the guidelines for the billing and for recovering
18 those funds. In fact, I was pleased that Defense Secretary
19 Chaney mentioned me personally in a speech a couple of months
20 ago about cleaning up federal facilities.

21 And so, we need to sign those memorandums of
22 agreement before we can bill, and five of those have been
23 signed. We signed for five Air Force bases and one Army
24 base.

25 SENATOR PETRIS: How much is involved there?

26 MR. CUNNINGHAM: That'll be another 18 million.

27 SENATOR PETRIS: Do you have an edge as a Reserve
28 Colonel in dealing with them?

1
2 MR. CUNNINGHAM: Senator, it helped me -- you've
3 got good G-2 there -- but it helped me tremendously, because
4 I was at a meeting back in Washington, and I heard one
5 Lieutenant Colonel say to another guy, "We can't b.s. this
6 guy because he knows the military lingo." So, that actually
7 helped me.

8 SENATOR PETRIS: I would think so.

9 MR. CUNNINGHAM: That helped my advantage.

10 SENATOR PETRIS: Thank you.

11 I may have some questions after you make your
12 statement.

13 MR. CUNNINGHAM: Yes, sir.

14 CHAIRMAN ROBERTI: Any further questions?

15 Is there anybody else here in support or
16 opposition? Please make it relative brief.

17 MR. RIDGEWAY: My name is H.W. Ridgeway.

18 I sent this letter to you the next day after your
19 last hearing on June 20th, this past summer.

20 Before I get into this letter, I'd like to say a
21 couple of things.

22 He was talking a while ago about not being able to
23 fine these polluters. I was told by Senator Torres' office
24 that they had the force, the so-called toxic ticket, on to
25 Cunningham and his crew at TSCP. And that toxic ticket is an
26 administrative law tool whereby they got a schedule of fines
27 for offenses, and they can go out there, and the inspector
28 can, on the spot, tell the guys what they owe.

1 Well, last -- I don't know, last fall sometime, I
2 became aware of this toxic ticket program. I wrote a letter
3 to Sally Tanner. And in the meantime, then, I discovered and
4 became aware of a chain of auto repair shops here in Northern
5 California that didn't have an EPA number, they had no
6 contingency plan, no training plan, no nothing. And
7 following that toxic ticket schedule, if an inspector -- it
8 would have taken about four man-days to have made the rounds
9 of those nine tire stores here in Northern California. And
10 following that schedule would have resulted in \$28,000 fine.

11 They write about \$40,000 a year of them.

12 Another thing, the budget that these guys have got
13 and have had under Cunningham, so few inspections are made
14 that each and every one of them, according to the Auditor
15 General, costs somewhere between \$85,000-125,000 each, and
16 there's no reason why those inspections couldn't be made and
17 the report written up, and the whole business done in
18 probably a week or two weeks' time, except in rare cases,
19 You might get one.

20 But whenever you come to his accomplish-nothing
21 procedures that he's established there, that's the kind of
22 nonsense you get into.

23 I'd just like to read you the letter, and then I'll
24 get out of here. I wrote this letter to Senator Roberti, and
25 I said:

26 "Dear Sir:

27 "I would like to respectfully
28

1 remind the Senator that attitudes
2 and policies practiced for the past
3 few years under Cunningham's regime
4 did not suddenly end on October of
5 1989 when he left the TSCP. In
6 fact, most if not all of the
7 attitudes and biases engendered by
8 Cunningham are still firmly in place
9 at the TSCP. Cunningham still bears
10 responsibility for what happened to
11 Dr. Rash B. Ghosh. I would also
12 like to make everyone aware that,
13 even though Senator Mello seemed to
14 agree with the State agencies'
15 assertions that Dr. Ghosh was not
16 qualified even with all his degrees,
17 there are unit chiefs in the TSCP
18 that only have degrees in home
19 economics. This is a glaring
20 inconsistency and a double standard
21 on the part of Cunningham and his
22 toadies.

24 "The fact that there is
25 documented proof of a 20% turnover
26 rate among TSCP scientists
27 (Hazardous Materials Specialists)
28 would seem to be strong indication

1 that there exists a malodorous
2 personnel problem at the TSCP that
3 did not suddenly begin after
4 October, 1989. Noteworthy, too, is
5 the fact that in Region 2, where
6 [Howard] Hatayama and Charlene
7 Williams are chief, there exists a
8 42% turnover, and an average 30%
9 vacancy rate of professional
10 scientists.

11 "Cunningham's statement [on
12 June 20th] that for every 50
13 employees unhappy with him, he could
14 produce 250 that would support him,
15 only proves that toadyism is
16 flourishing in the bureaucracy.

17 "I would like to point out too
18 that Howard Hatayama, Chief of
19 Region 2, was suggested as a defense
20 witness by Cunningham to support the
21 mistreatment of Dr. Ghosh. This
22 shows his arrogance [and]
23 disrespect and dishonesty in the
24 discharge of his public trust and
25 duties as a regional administrator.
26 To these qualities in Mr. Hatayama
27 must be added the fact that he does
28

1 not understand English. I have
2 documented proof that the above is
3 true in his case."
4

5 And that stuff is all in the State Personnel Board. That's
6 why I don't have it here today.

7 "I'm very curious about how my
8 charges against Cunningham were
9 received by the Committee, since no
10 one had any question nor asked for
11 any proof that I could of [sic]
12 produced. At this point you do not
13 know me and so it makes me wonder,
14 was what I said accepted at face
15 value and therefore Cunningham would
16 not get a favorable recommendation
17 from the Committee? Or, was the
18 very serious charges that I made
19 without proof just accepted as the
20 raving of a disgruntled member of
21 the public?

22 "I believe, based on
23 Cunningham's record at TSCP and the
24 method of continued operations that
25 it would be a sore misuse of
26 taxpayers' funds to spend \$88
27 thousand dollars per year on a
28 salary for Cunningham and have him

1 in a position to continue to harm
2 the community."

3 CHAIRMAN ROBERTI: Thank you very much.

4 Any other witnesses? Any questions? Yes, the
5 woman with the green dress.

6 MS. KISER: My name is Phyllis Kiser from Amador
7 County.

8 Under Department of Health Services, Alex
9 Cunningham's running the Department of Health Services, I
10 learned a lot of new words last year: designated waste,
11 special waste, and exotic waste. It's all still the same
12 poison.

13 It's all still the same poison that Department of
14 Health Services, under Mr. Cunningham's direction, wanted to
15 dispose of in our landfill in Amador County.

16 Department of Health Services has never enforced a
17 maximum fine. Casmalia could have been fined 24 million, but
18 they were fined less than 10,000.

19 I'm not a toxicologist, but I have a Ph.D. in DOHS
20 b.s.

21 CHAIRMAN ROBERTI: Thank you very much.

22 Any other witnesses? The gentleman in the back.

23 MR. NOTINI: Senator Roberti, my name is Ric
24 Notini. I'm a former employee of the Toxic Substances
25 Control Division. I worked for the Department for five
26 years, and I was the immediate supervisor of Dr. Ghosh for a
27 period of about 11 months in 1987.
28

1 I understand that Dr. Ghosh has alleged
2 discrimination, and I just wanted to be available to answer
3 any specific questions you might have.
4

5 I would just like to mention this, that my time at
6 the Department, I can say, under Alex, that he encouraged and
7 directed us to implement the Department's affirmative action
8 and equal employment opportunity program, and I can recall
9 going to managers meetings in Sacramento where we started off
10 the meeting discussing that, and he actually had people
11 coming from the Office of Civil Rights to remind us about the
12 need to do that. And he was very supportive.

13 In terms of Dr. Ghosh's instance, it's the only
14 instance when I worked for the Department where I, during a
15 probationary period of an employee, I felt that it was my
16 duty to dismiss the employee for failure to perform his
17 duties. And I felt it had nothing to do with discrimination
18 but simply his ability to not perform at the level of
19 Associate Hazardous Materials Specialist.

20 He did, following his demotion to Hazardous
21 Materials Specialist position, allege discrimination. There
22 was an extensive investigation conducted by the State Office
23 of Civil Rights. I understand that they interviewed over 30
24 people, and they concluded that there was no discrimination.

25 I understand that this has now been elevated to the
26 federal level, and I'm confident that if they do as thorough
27 of an investigation and get all the facts, they will agree
28 with the state's findings.

1 I'd be happy to answer any questions you have.

2 CHAIRMAN ROBERTI: What was your position at the
3 time?
4

5 We received a letter from the Civil Rights
6 Commission, U.S. Department of Justice.

7 Do you know of that letter that they received where
8 they felt there was a violation?

9 MR. NOTINI: I'm not sure if I was still employed
10 by the Department when that letter was issued. I'm not
11 familiar with it.

12 CHAIRMAN ROBERTI: Are you aware of the
13 circumstances surrounding the receipt of the letter?

14 MR. NOTINI: Not really.

15 I was a Senior Hazardous Materials Specialist in
16 1987 at the time I supervised Dr. Ghosh, and I was employed
17 until August of '89.

18 CHAIRMAN ROBERTI: So, was it your feeling that
19 Dr. Ghosh was a victim of discrimination?

20 MR. NOTINI: No, it is not my feeling that he was a
21 victim of discrimination.

22 CHAIRMAN ROBERTI: Do we have a copy of the letter?

23 MS. MICHEL: Yes.

24 CHAIRMAN ROBERTI: This letter was received
25 November 17, 1989.

26 MR. NOTINI: I left the Department in August of
27 '89.

28 CHAIRMAN ROBERTI: I guess it was not specific as

1 to the complaint, just that there's reason to believe that
2 the allegations have basis. I guess that was on the salary
3 dispute of Dr. Ghosh with the DHS.
4

5 Mr. Schaefer, why don't you come forward while
6 Mr. Notini and Mr. Cunningham are here.

7 What was the actual charge in reference to?

8 MR. SCHAEFER: The charge?

9 CHAIRMAN ROBERTI: For which the Department thought
10 there might be some basis? The Department of Justice thought
11 there might be some basis in fact?

12 MR. SCHAEFER: The charge that they issued the
13 letter of determination on involved discrimination on the
14 basis of his being a Bengali Indian.

15 CHAIRMAN ROBERTI: For what reason?

16 MR. SCHAEFER: In the letter of determination, it
17 was clear that they didn't have a response from the
18 Department of Health Services.

19 CHAIRMAN ROBERTI: About what?

20 MS. MICHEL: That there had been no response from
21 Health Services for what they had asked for.

22 MR. SCHAEFER: In the stuff submitted by the
23 Department to me concerning the other cases, they did submit
24 information to EEOC, the EEOC decided in favor of the
25 Department.

26 CHAIRMAN ROBERTI: It was your feeling it was just
27 the lack of submissal of information that was the cause of
28 the letter?

1 MR. SCHAEFER: No, it was my feeling that it was
2 inconclusive.

3 I can't determine whether or not there was
4 discrimination.

5 MR. CUNNINGHAM: Senator?

6 CHAIRMAN ROBERTI: Yes.

7 MR. CUNNINGHAM: One of the questions that you
8 raised at the last hearing, or at my first hearing, was
9 whether or not the folks under my jurisdiction were deficient
10 in responding in a timely manner.

11 From what I've been able to determine, based on
12 letters that were in file, the letters went from -- and Andy,
13 I don't know whether you can bear me out on this or not --
14 but the letters went from the Toxic Substances Control
15 Program to the Office of Civil Rights in the Department of
16 Health Services, which is out of my jurisdiction. In other
17 words, they report directly to Dr. Kizer.

18 And for whatever reason, OCR within Health Services
19 did not -- they did not send them, apparently, on a timely
20 enough basis to the federal EEOC.

21 But I have copies of the responses that were, like,
22 five days after something was requested.

23 CHAIRMAN ROBERTI: What I would suggest we do is,
24 I'm going to take up rule waivers. I want to go over the
25 chronology that I just received.

26 I would then ask for Dr. Ghosh to have five minutes
27 to state his case. We can't give him any longer because we
28

1 have an endless calendar.

2 And then, Mr. Cunningham, I'm going to have you
3 rebut.

4 If there are others who wish to testify, or think
5 their information may be of value, please stick around.
6 That's how we'll handle this.

7 I have Members who have meeting or appointments
8 after 5:00, and I hate to leave the Assembly Members hanging
9 for that long of a period. So, I'm going to take up rule
10 waivers now. I'm going to read the sequence of letters, and
11 then Dr. Ghosh will have a chance, five minutes, and then Mr.
12 Cunningham to conclude.

13 MR. CUNNINGHAM: Thank you, sir.

14 [Thereupon the Rules Committee acted
15 upon legislative items on the agenda.]

16 CHAIRMAN ROBERTI: The Committee will come to
17 order.

18 We left off with Mr. Cunningham.

19 Dr. Ghosh, would you like to come testify, and then
20 Mr. Cunningham will have a chance to rebut, and with that
21 we'll vote.

22 Dr. Ghosh, I hate to keep you to five minutes, but
23 I think we're going to have to.

24 DR. GHOSH: I am grateful to you, Senator, for
25 giving me the opportunity.

26 While I got some information together, I have
27 limited time, so I would also appreciate to show some of the
28

1 documents I have to share with Mr. Cunningham. That will
2 help, because I talked with Mr. Andy Schaefer, and he gave me
3 some guidelines, what I should talk would be useful, and I
4 appreciate that.

5
6 You will see, when the United States Equal
7 Opportunity Employment Commission determined the Department
8 has grossly violated Civil Rights, Title 7, 1964, despite
9 many letters, requests for information and subpoena on
10 October 27, 1988, June 6, 1989, June 28, 1989, and October 2,
11 1989, respondent has failed to produce comparative data and
12 its own investigative report.

13 "Evidence of record refutes
14 respondent's position ..."

15 That means respondent answered some of the letters. They did
16 not mention here.

17 "... in that charging party has many
18 publications and commendable
19 statements from others in a position
20 to evaluate his presentation,
21 substance and delivery. The
22 Commission credits charging party's
23 assertion of harassment, and the
24 Commission credits charge party's
25 assertion that other Bengalis and
26 East Indian professionals were also
27 adversely affected by respondent."

28 You have already witnessed Mr. Arun Roy. He's also

1 Bengali. We speak the same language; we are from the same
2 place. We're from the same site mitigation under the same
3 supervisors, one unit leader. All happened at the same time.
4

5 "Based on these analysis and my
6 review of the entire record, I
7 conclude the evidence establishes a
8 violation of Title 7 of the Civil
9 Rights Act of 1964."

10 In addition to that, I would like to just add very
11 briefly --

12 SENATOR PETRIS: Whose decision was that?

13 DR. GHOSH: United States Equal Employment
14 Opportunity Commission.

15 The respondent has provided some incorrect or
16 false information. Just for the record, while I responded to
17 the EEOC, my response:

18 "I did not get a chance of plea
19 determination interview, and
20 therefore I could not give a
21 rebuttal and submit any additional
22 information to counter respondent's
23 charges. It is news to me that I
24 can sell presentation to my peers.
25 I was never invited to make a
26 presentation to my peers, but in
27 fact was prevented me from making a
28 presentation at the international

1 conference, arranged by the
2 Hazardous Materials Research
3 Institute in Maryland. In support
4 of that, I would like to add that
5 this was pre-approved by Mr.
6 Cunningham ..."

7
8 to attend the conference, specific conference,
9 "... by Mr. Cunningham, and all my
10 supervisors in the chain of
11 command."

12 Here, public speaking, technical paper
13 presentation, present papers at conference related to Toxic
14 Substances Superfund. Exact name, title, everything.

15 My supervisor did not agree to include aquatic
16 toxicology. That was my original field. But my present
17 supervisor has kindly agreed to include that. The reason she
18 did not agree, she did not realize that I would be able to
19 prepare and write a paper in a new field in the shortest
20 period of time.

21 Is there anybody in the history of the Toxics or
22 Department of Health has performed or writes such a paper in
23 a new field in the shortest, shortest span of time? I would
24 like to hear. Some of my young supervisors' friends are
25 here.

26 I tolerated, digested a lot of audacity from them,
27 but I was always respectful to them because I'm a law abiding
28 citizen, and they rated my attitude was outstanding. They

1 are younger than I. That's why I never mentioned them in the
2 last hearings.

3 I think Cunningham was the person. He is the
4 Chief. He is the manager.

5 I will give you the documented evidence according
6 to stated law, and I'll state the section, too.

7 So, this is the paper. This is the paper was
8 approved by 11/9/88 and my supervisors, the individual
9 development, and here is the memo from Mr. Alex Cunningham,
10 giving the outline, and here is the guidance document.

11 And I fulfill all of these. While I could not make
12 it going, I personally wrote a separate memo to invite his
13 attention so that he knows the man of developing country has
14 come to my door and made a significant improvement writing a
15 paper in a new field. Maybe it will make him realize that
16 I've done something different. But he ignored that, and in
17 spite of that, I got a warning letter from my supervisor.

18 Now, this is Alex's memo. Here I have Alex's
19 resume, too, that I'll talk about, too. And here is the
20 individual development.

21 Fortunately, my current supervisor has included the
22 same thing: attend eleven trainings and courses pertaining
23 to laws, policies, procedures; attend technical conferences
24 on aquatic toxicology and ecology. He kindly agreed because
25 state encourages, if employee has certain special background,
26 the state supports that; state provides some limited
27 resources, so he agreed to that. And so, I could include
28

1 that in my current supervisor. And this was the -- this was
2 my previous supervisor.

3
4 Now, having said that, I was very surprised to
5 discover that Mr. Cunningham flatly refused my request to
6 attend an international conference in New Orleans to present
7 a paper on groundwater contamination of Silicon Valley, one
8 of the national toxic hot spots. This conference was
9 organized by nation's most prestigious organization in
10 toxics -- that means in our field -- the Hazardous Materials
11 Research Institute in Maryland.

12 I'm repeating. This is very important to my
13 career.

14 He did not give me -- I mean he, Mr. Cunningham --
15 any reason for this decision. I received warning letters and
16 additional harassment because of this by my immediate
17 supervisor.

18 Mr. Cunningham, I wrote a memo to Mr. Cunningham,
19 and he did not answer to that. So, I thought that he meant
20 this time my correct information must not believe the
21 concocted story of his subordinate managers [sic], but this
22 was in vain, because he is racially biased.

23 The affirmative action guidance documents clearly
24 state that our -- our state affirmative action guidance
25 documents -- that the Director of the Department has ultimate
26 responsibility about implementing civil rights and
27 affirmative action. But it is this same document state that
28 the Chief Deputy Director and his subordinate managers --

1 CHAIRMAN ROBERTI: Dr. Ghosh, we're --

2 DR. GHOSH: -- direct responsibility --

3 CHAIRMAN ROBERTI: Dr. Ghosh, we're going to have
4 to ask you to conclude.

5 DR. GHOSH: Just give me one more minute.

6 I request the honorable Committee confirm the
7 misconduct and delaying tactics of DHS civil rights in
8 handling of my case from the honorable Lt. Governor Leo
9 McCarthy and honorable Speaker, state Speaker, Willie
10 Brown's office. They have been maintaining my file over two
11 years. And in spite of their repeated efforts, they were
12 unable to expedite this investigation.

13 The DHS CRO, Civil Rights Office, repeated broke
14 their promises, and I don't know who played behind it.

15 Therefore, I request you to pass laws to protect
16 employees' harassment and prevent fraudulent activities of
17 dishonest and bad management. I do not want to see in my
18 lifetime another employee of our golden state suffer the way
19 I have been suffering. Please issue an order, correct my
20 position immediately, and arrange a hearing regarding this
21 gross discrimination, and compensate me for my loss, career
22 damage and vast inequititation [sic].

23 Thank you.

24 CHAIRMAN ROBERTI: Thank you, Dr. Ghosh.

25 Before Mr. Cunningham comes, we're approach ten
26 minutes of six, and I think Mr. Pressley's appointment also
27 will be controversial.
28

1 Would there be any problem -- I hate to do this
2 because I know people have been sitting through this -- to
3 have Mr. Pressley come back next week? And I would promise
4 to take that appointment up first thing.

5 Mr. Pressley, please, if it's too enormous an
6 inconvenience, then --

7 MR. PRESSLEY: It would be my desire to have it
8 taken up today; however, if that's what your wish is,
9 certainly we can come back.

10 As far as people speaking on my behalf, I don't
11 know what their schedules are.

12 CHAIRMAN ROBERTI: Who could not come back next
13 week that is here for Mr. Pressley? Is there anybody here to
14 testify for Mr. Pressley who could not come back next week?

15 If we can take it up next week, you're better off
16 doing it next week. It fits better.

17 MR. PRESSLEY: Fine.

18 CHAIRMAN ROBERTI: I hate to do this to you, but I
19 promise to take you up first next week.

20 MR. PRESSLEY: Fine, thank you.

21 CHAIRMAN ROBERTI: Mr. Cunningham.

22 MR. CUNNINGHAM: Thank you, Senator.

23 I don't know whether Andy Schaefer has any other
24 comments. I know when we took the break, there were some
25 questions being asked of Andy.

26 Senator, I've asked two folks from the Toxics
27 Program to join me. On the far left, Bob Borzelleri, who is
28

1 the institutional memory. He's the community affairs and
2 legislative liaison for the program.

3 And Ric Notini, the immediate supervisor of
4 Dr. Ghosh.

5 The issue, again, seems to be one of whether there
6 was any discrimination or not. And I thought you make it
7 clear at the beginning of my testimony today that there was a
8 very thorough investigation done, and it was found that I was
9 not involved in that.

10 What I would like to submit, Senator, is a copy of
11 a letter to you from Mohinder Sandhu, to save you from
12 finding it in your file, and I've outlined a few points in
13 that letter.

14 Mr. Sandhu also descends from East India. And
15 Mr. Sandhu, out of a program that has 1,000 employees, is one
16 of the top 20 managers. And he points out in his letter that
17 I was directly responsible for promoting him.

18 I fail to see how I could be discriminatory against
19 folks or people of East Indian descent and yet do that.

20 I'm sorry if my testimony is somewhat disjointed,
21 but I was making -- scribbling some notes as I went through

22 But as long as we're on the discrimination issue
23 and the affirmative action issue, I mentioned in my earlier
24 testimony in June that I have a very strong consistent record
25 in affirmative action. You heard Ms. Mary Box testify to
26 that effect, and it's not a Johnny-come-lately type thing.
27 That's something that I began in 1973 when I was with the
28

1 Office of Emergency Services.

2 I also testified at my original hearing, right at
3 the very end in June, that ACR 145, which was a hearing on
4 Hispanic hiring and the fact that we had set a goal of 20
5 percent, we had sent people out of state to do the
6 recruiting. We went to Texas, Arizona, and New Mexico, and
7 we came back with 28 percent hires in Engineer class, and 32
8 percent Hispanic hires in the Hazardous Materials Specialist
9 class. These are not low-paying jobs; these are mid-level
10 managers, and I'm very proud of that fact.

11 Senator, before I begin to rebut the other issues
12 that were raised, let me say that I have a great empathy for
13 those people who testified today that are affected by living
14 near a toxic waste facility. Toxic waste is obviously a
15 highly emotional and very technical issue, and the science is
16 constantly changing.

17 If I lived near a toxic waste facility, I would
18 probably feel the same way that they do. Nevertheless, in
19 this position that I left at Toxic Waste, I was obliged to
20 carry out the laws that were passed by the Legislature. And
21 I can assure you, Senator, that all decisions that I made
22 were made after hearing all of the facts, and I assure you we
23 also took into account the concerns and the considerations of
24 the people from the various communities. And in some
25 instances, we actually modified permits.

26 Additionally, to ensure we had the proper input
27 from community groups, we set up and met with community
28

1 groups and worked with them, and in many instances, actually
2 paid, at their request, for a technical advisor to help the
3 citizens better understand the technical aspects of what we
4 were trying to do at the area.
5

6 Casmalia facility has been closed for some time.
7 We closed it.

8 FROM THE AUDIENCE: That's not true.

9 MR. CUNNINGHAM: It is now under consideration for
10 a new permit for improved operations, and I think that's
11 probably the real issue here.

12 The simple issue is that the people who live there
13 do not want the facility to exist, and I can understand that.
14 But we do have to go through the process.

15 The role of the Toxics Program is to afford the
16 applicant due process, and these run counter to each other's
17 ideas.

18 Many of the problems that occurred at Casmalia
19 occurred prior to 1986, prior to my coming on board. I know
20 of no technical data that supports some of the allegations
21 that were made earlier today.

22 I do know that Dr. Kizer and his complete staff of
23 epidemiological studies went down and conducted a thorough
24 hearing in the area. There were air samples taken. There
25 was nothing to support many of the allegations.

26 I remember Dr. Kizer asking all of the medical
27 doctors in that area for records that would validate some of
28 the charges that were made, and we were unable to obtain

1 those documents.

2
3 With regard to the waste facility in Amador County,
4 I can understand -- I believe it was Ms. Millington that
5 raised that issue -- Senator, that is a solid waste facility.
6 That does not come under the jurisdiction of the Toxic
7 Substances Control Program. It's a local issue with regard
8 to the local health department, and it's a local siting
9 issue.

10 With regard to some other testimony concerning the
11 mishandling of the Tanner process -- and I'm really cutting
12 through this. I hope I'm making sense -- with regard to the
13 Tanner process, it's not true, as someone alleged earlier
14 today, that the environmental groups opposed our handling of
15 the Tanner process.

16 The key issue here, Senator, was that the counties,
17 based on the Tanner process, had to develop a plan to handle
18 the wastes within their own county. And we had to play hard
19 ball with the counties in order to get them to face the
20 issues. In other words, they had to site facilities within
21 their counties, and obviously, didn't want to make those
22 tough decisions.

23 In fact, the Sierra Club said: stick to your guns,
24 state, this is an important issue.

25 The key -- oh, somebody said that we did not
26 require EIRs for incinerators. The law did not require EIRs
27 for incinerators. Assemblywoman Roybal-Allard, when I saw
28 her come in today it reminded me that she had a bill just

1 prior to my leaving the Toxics Program that called for all
2 incinerators to have EIRs. We originally had some problems
3 with that. We worked out the bugs, the glitches, with the
4 author. I then support the bill and suggest that the bill be
5 signed, and the Governor did in fact sign it into law.

6
7 Mr. Ridgeway testified about someone -- I think
8 they said that Senate Toxic Committee had to force the toxics
9 ticket down our throat.

10 That's absolutely not true, sir. The toxics ticket
11 was my -- I won't say it was my idea. I don't want to steal
12 somebody else's thunder. When I was back east on a personal
13 trip, I went to the State of New Jersey, because I heard they
14 were doing some very innovative things. They were the ones
15 that started the toxic ticket program.

16 I came back, told staff about it, and we did this
17 as a pilot project. We didn't have to shove down our throat.
18 We thought it made sense.

19 As far as the 20 percent turnover in the program,
20 there's a lot of young, talented people in the Toxic Waste
21 Program, and they're being hired away by industry every day
22 at \$20-30,000 a year more than we can pay them in the state.
23 We have a very young, dedicated, talented, and hard-working
24 staff, and I think it's a disservice for people to malign
25 them.

26 There was the one sentence that Dr. Ghosh read
27 about subpoenas. In checking the entire record, that
28 sentence in the letter was very misleading, and what it said

1 was, it mixed subpoenas and letters, and it gave four
2 different dates. But there was only one subpoena for
3 information ever issued in relation to Dr. Ghosh's situation,
4 and that was the subpoena that came in after I had departed
5 from the program.
6

7 Senator, in closing with that part of it, if we are
8 ever to win the war on toxic wastes, I think the key is waste
9 minimization. I think it was mentioned earlier that we have
10 major corporations that are now signing up voluntarily to
11 reduce their waste by 50 percent over the next few years.
12 We're talking about Chevron, Dow Chemical -- Bob, help me
13 out. You know who --

14 MR. BORZELLERI: Those are the two that I remember.

15 MR. CUNNINGHAM: I've got them here in my book,
16 Senator. There's some major players, and I think that's just
17 the tip of the iceberg. I think with these major players
18 voluntarily agreeing to address the problem of source
19 reduction, I think some others are going to fall in line.

20 But waste minimization is honestly -- has to be the
21 key, because if we're going to win the war, we have to stop
22 this waste before it gets into the pipeline.

23 Senator, in closing with this rebuttal -- and I
24 don't know whether you have any questions on the PERB issues
25 or not -- this has obviously been the toughest job of my
26 life. It's obvious that nobody, I don't care who they are,
27 is ever going to win a popularity contest running the Toxic
28 Waste Program.

1 I consider myself a good administrator. I think
2 I've served the state ably for over 30 years. More
3 importantly, I consider myself a good, honest, fair, and
4 decent human being. And it bothered me, I guess, when the
5 charges were made about the children dying and people
6 becoming sick. And Senator, I can honestly tell you that if
7 children died, or became gravely ill, because of a decision
8 that I knowingly made, I couldn't look myself in the mirror.
9 I'm just not that kind of a person.
10

11 I don't know whether you have any questions --

12 CHAIRMAN ROBERTI: Any questions of
13 Mr. Cunningham?

14 SENATOR PETRIS: Yes.

15 Would you comment further on the children's
16 situation there?

17 There was a statement made that in this small area,
18 80 percent of the people or of the children, I forget which,
19 were afflicted as a result, and the report kind of dispersed
20 that into the whole county and said it was a minimal thing.

21 Could you respond to that?

22 MR. CUNNINGHAM: Senator, we hear these charges a
23 lot of times, and we never see the factual data.

24 I know that in the Casmalia situation, for example,
25 we asked the doctors, we begged the doctors down there -- not
26 me, but Dr. Kizer. Epidemiological Studies, which is the one
27 that takes care of the health effects, is not under our
28 program. We work closely with them, but they report

1 separately to Dr. Kizer.

2 They wrote the doctors down in the Casmalia area
3 and said, "Please, for God's sake, give us the data so we
4 have something to go on." They wouldn't give it to us.

5 SENATOR PETRIS: Why not?

6 MR. CUNNINGHAM: They just refused to.

7 SENATOR PETRIS: The health department?

8 MR. CUNNINGHAM: These were private physicians that
9 the people allegedly had gone to, and Dr. Kizer had asked
10 them, "Please, give me something so that I can have our
11 medical people look at it." If there's a problem, we need to
12 pin it down. We can't go on hearsay.

13 MR. BORZELLERI: Senator, there was some
14 significant reluctance on the part of citizens in the area to
15 participate in the state's request to have a health study
16 done. The state and the county basically petitioned again
17 and again to solicit as much information as possible.

18 It would be speculation on my part to suggest why
19 they did not provide that information, but I can only assume
20 that they decided that their interests would not be served by
21 providing that information.

22 SENATOR PETRIS: I didn't get your name.

23 MR. BORZELLERI: My name is Bob Borzelleri. I'm
24 the Chief of the Office of External Affairs for the Toxic
25 Substances Control Program, and there I manage programs for
26 community relations, for site mitigation and facility
27 permitting, legislation and regulation, information,
28

1 education, and a number of things.

2
3 SENATOR PETRIS: Thank you.

4 MR. CUNNINGHAM: Senator, one other letter I had in
5 this pile of information, I know the issue was raised earlier
6 about the quickness of the response from my people to the
7 Office of Civil Rights.

8 Now, when a discrimination charge is filed with
9 EEOC, EEOC contacts the Office of Civil Rights, which is not
10 under my bailiwick. That's under Dr. Kizer.

11 The Office of Civil Rights, under Pliney Young,
12 then determines exactly who it is that needs to provide
13 information. They contact them. They don't come through me.

14 I do have a copy of a letter that went to Scott
15 Richmond, who was the investigator. The letter is from
16 Dwight Hoenig, who was here earlier, and the letter is dated
17 December 7th, 1988, and it says:

18 "I am writing in response to your
19 memo of November 28th, 1988."

20 That's nine days, and there was the response.

21 Why it didn't get from OCR to EEOC, I don't know.
22 I do know, in talking to Pliney Young, she said there was
23 some tremendous staff turnover; they had some emergency
24 medical leaves. Six of the seven people had problems during
25 this period. I don't know whether that was the problem or
26 not, but there's the letter with the dates.

27 Senator, I know it's getting late. I think I've
28 responded to the charges that have not been covered earlier.

1 If there's anything else, any other questions --

2 CHAIRMAN ROBERTI: Are there any other questions of
3 Mr. Cunningham?
4

5 Then do I hear a motion?

6 SENATOR CRAVEN: Mr. Chairman, I'm pleased to move
7 the nomination of Mr. Cunningham to the Floor.

8 CHAIRMAN ROBERTI: Senator Craven moves
9 Mr. Cunningham's nomination be recommended to the Floor for a
10 Member of the Public Employment Retirement Board.

11 Secretary will call the roll.

12 SECRETARY WEBB: Senator Beverly.

13 SENATOR BEVERLY: Aye.

14 SECRETARY WEBB: Senator Mello.

15 SENATOR MELLO: May I make a statement?

16 CHAIRMAN ROBERTI: We're on the roll call.

17 SENATOR MELLO: Then I'll vote and make a statement
18 afterwards.

19 CHAIRMAN ROBERTI: You could make a statement
20 before you cast your vote.

21 SENATOR MELLO: I'll make it after the vote.

22 Mello aye.

23 SECRETARY WEBB: Senator Petris.

24 SENATOR PETRIS: No.

25 SECRETARY WEBB: Senator Craven.

26 SENATOR CRAVEN: Aye.

27 SECRETARY WEBB: Senator Roberti.

28 CHAIRMAN ROBERTI: Aye.

1 The vote is four to one; confirmation is
2 recommended to the Floor.

3 Senator Mello.

4 SENATOR MELLO: Mr. Chairman and Members, I'm sorry
5 I stepped outside momentarily.

6 I just was going to say that it's too bad most of
7 the testimony centered around just a couple of issues really
8 unrelated to his distinguished nearly 35 years of public
9 service in the State of California.

10 My experience with him was having four disasters in
11 Santa Cruz County and Monterey, and of all the people in
12 state government, I've never seen a person who could make
13 decisions and get things done, dealing with FEMA, dealing
14 with all these different agencies, which I call the
15 bureaucracy, and here's a person here that can really make
16 government be responsive.

17 That's why I'm just happy to join in supporting
18 him.

19 I hope we never have another emergency, but no
20 matter if you're with the PERB Board or not, we'll be calling
21 on you to try to bail us out, because you've done it more
22 than once.

23 I just appreciate your service to the State of
24 California and the country. Thank you.

25 MR. CUNNINGHAM: Thank you, Senator.

26 CHAIRMAN ROBERTI: Thank you and congratulations,
27 Mr. Cunningham.
28

1 MR. CUNNINGHAM: Thank you, Senator.

2 CHAIRMAN ROBERTI: The next appointment is
3 Mr. Vernon Smith, Superintendent of the Sierra Conservation
4 Center.

5 MR. SMITH: Yes, sir.

6 CHAIRMAN ROBERTI: Mr. Smith, we'll ask you what we
7 ask all the Governor's Appointees, and that is why you feel
8 you're qualified to assume this position?

9 MR. SMITH: Senator, I began my career in 1960. I
10 have almost 30 years with the California Department of
11 Corrections.

12 I began as a correctional officer at Deuel
13 Vocational Institution, at Tracy. I worked the California
14 Correctional Center at Susanville, Correctional Training
15 Facility at Soledad, California Institution for Men. Also
16 four years at Headquarters, the previous four years at Sierra
17 Conservation Center.

18 I was privileged to be the new prison Manager and
19 Warden -- or, I'm sorry, Superintendent at Chuckawalla Valley
20 State Prison when we first opened that, and then I moved back
21 to Sierra Conservation Center.

22 CHAIRMAN ROBERTI: Thank you.

23 Is there anyone in the audience in support of the
24 nomination? Is there anyone in opposition? Please come
25 forward.

26 MS. BARRY: Well, I started off with good morning,
27 and now it's good evening, but it's still the same.
28

1 My name is E. J. Barry, and I'm with E. J. Barry
2 and Associates, and I'm here representing my client, the
3 Association of Black Correctional Workers. There are 3,007
4 members of this organization who are employed with the
5 Criminal Justice system.

6 They have sent a letter. I don't know if you have
7 that letter.

8 CHAIRMAN ROBERTI: Do we have a copy of the letter,
9 Nancy?

10 MS. MICHEL: It's in your file. The letter is
11 dated June 22 and was received yesterday.

12 MS. BARRY: The letter is dated June 22nd. We
13 initially wrote this letter. There were three meetings set
14 up. There was one meeting set up with the Director of
15 Corrections that would address some of the concerns that the
16 ABCW had.

17 That -- subsequently to that, another meeting was
18 held on June 20th with the Director coming back to the
19 meeting table to discuss some of the resolutions or how they
20 resolved the concerns.

21 After that, Mr. Smith then had a meeting on July 14
22 with the President of the Association.

23 So, all of this time, this letter has been waiting,
24 and none of the concerns have been met. So finally, they had
25 to mail the letter.

26 But all of this misdirection in terms of having a
27 meeting, setting a meeting, and not resolving, is what kept
28

1 the letter from being mailed.

2
3 Some of the concerns that the Association have with
4 Mr. Smith in terms of lateral promotions and appointments, in
5 terms of EEO complaints, hires, promotion, work assignments
6 being routinely made at Sierra Conservation Camp.

7 When Mr. Smith went to Sierra, he indicated that he
8 would -- his philosophy was to keep custodial staff in
9 positions for at least two years prior to rotation.

10 Immediately after that, he changed a 19-year
11 veteran to a weekend shift. This is a black lieutenant.

12 Also, in terms of the management skills, there was
13 an incident that occurred with a black female staff member,
14 and her information -- apparently she served a meal to people
15 in terms of a support, or like an award. And this was
16 written up because apparently this wasn't policy. However,
17 this had been done previously by other personnel.

18 Mr. Smith denied having any knowledge of this being
19 written up in this person's personnel file. I do have a copy
20 of the documentation that was written up.

21 So, the Association has a concern that Mr. Smith's
22 management skills are suspect, in that he does not know what
23 is going on around him. And I do have a copy of the person's
24 file that was written up on this.

25 Additionally, the Association had some concerns
26 regarding Mr. Smith's employing his wife as the telephone
27 operator without process of an interview. We also would like
28 to submit -- I did talk with Mr. Smith during the day, and he

1 indicated to me that there was no other candidate.
2

3 And basically what the Association would like you
4 to know is that subsequent to this confirmation hearing, all
5 of the assurances that Mr. Smith has given to the Association
6 have been verbally made. And in terms of verbally expressing
7 himself, Mr. Smith does a wonderful job.

8 But in terms of actually coming through with some
9 of the things that -- his policy and his commitment, the
10 Association would like you just to consider before confirming
11 Mr. Smith if he would outline his plan for a balanced
12 workforce as he has stated to us verbally many times.

13 And I have correspondence here that only after the
14 meetings have things happened. Mr. Smith has created a
15 Warden's Advisory Committee, but this has only happened in
16 the last two weeks, after we expressed our concerns.

17 He's also indicated in memos personnel assignment
18 changes which were normally routinely made, he now has a
19 policy on that.

20 So, if he can create policies on these types of
21 things in two weeks before his confirmation hearing, I think
22 that it's also appropriate that his policies and his
23 philosophy in terms of a balanced workforce at Sierra
24 Conservation Center also be outlined.

25 We received a letter from Carlo Sanchez, the head
26 of the Recruitment and Selection for the California
27 Department of Corrections. He said that the reason that many
28 minorities were not recruited at Sierra and other places like

1 it was because blacks only like the bright lights and the big
2 cities.

3
4 CHAIRMAN ROBERTI: Only what?

5 MS. BARRY: The bright lights and the big city,
6 okay? We cannot function in the rural areas.

7 And I do have that letter, if anyone would like a
8 copy of it.

9 CHAIRMAN ROBERTI: Who said that?

10 MS. BARRY: Carlo Sanchez. He is -- CDC, he is in
11 charge of Recruitment and Selection. And he wrote that the
12 difficulty that he has with recruiting minorities to rural
13 areas is that they -- we apparently cannot function unless
14 there's a lot of cars and a lot of apartment buildings, or
15 something.

16 But at any rate, basically what the Association
17 would like to do is just consider before confirming Mr. Smith
18 that he will not only verbally express himself as to what he
19 plans to do in order to alleviate some of the problems in
20 terms of minority recruitment on laterals, but that he will
21 actually put into practice some type of policy or Warden's
22 philosophy in written form before being confirmed.

23 Anyone have any questions?

24 CHAIRMAN ROBERTI: Thank you.

25 Mr. Smith, do you have a policy of expanding
26 employment opportunities under your jurisdiction?

27 MR. SMITH: Yes, Senator.

28 Let me, if I may, go back over some of the issues.

1 I arrived at Sierra Conservation Center in
2 September of last year. If I may refer to some statistics
3 for the Committee.
4

5 CHAIRMAN ROBERTI: Please, and also speak to the
6 issues that Ms. Barry has brought up.

7 MR. SMITH: The last four years, specifically
8 related to the black population employee representation at
9 Sierra has ran -- from 1987 it was 8.5 percent; in '88 it was
10 9.2 percent; in '89, 8.6. This is as of July 1. And this
11 year has 7.7, which means the high point was 1988 and
12 dropping down.

13 I noticed immediately upon arrival at Sierra that
14 Sierra was underrepresented in blacks, and in Hispanics, and
15 in women.

16 The other statistics I'd like to give you, because
17 our major workforce consists of the custody personnel, is the
18 Correctional Lieutenant level at Sierra Conservation Center.
19 We have 20 percent black lieutenants, and we have 17.5
20 percent of Hispanics.

21 We also have, at the Sergeants, which is our weak
22 point in the black area, is 8.8 and 22.9 Hispanics.

23 At the Correctional Officer level, we're sitting at
24 9.7, which is -- all of these, we know, are above the labor
25 parity, but there's still, to me, more things need to be
26 done.

27 One of the first things that I talked about
28 arriving at Sierra was the balance, the days off, and balance

1 the watches, because I felt that they were not totally
2 balanced. So, I've had the Central Operations Associate
3 Warden working on that quite extensively.
4

5 In June of this year, this was before I was alerted
6 to any of ABCW's concerns verbally, because nobody had talked
7 to me previously about the concerns, not even my -- I have an
8 Associate Warden who's also a member of ABCW, and also runs
9 my camp program. None of these concerns were relayed to me
10 whatsoever.

11 But as soon as I was notified, I felt it very
12 important to try to rectify any issues that came up. So,
13 when my Deputy Director called me from the meeting that the
14 ABCW had with the Director, I immediately contacted my former
15 Deputy Superintendent, who was at Avenal, to ask who I should
16 be talking to. So, I did meet on July 14th with the
17 President of ABCW, and she outlined some issues at that
18 point. And I informed her of what I was doing in relation to
19 the employees advisory groups, which I had got some advice
20 from another superintendent who used these methods in
21 recruiting, and I implemented those.

22 It's not just because of the confirmation, and I
23 understand some people's concerns that I could say anything,
24 and so forth, but I have put somethings in writing.

25 My plan is -- and I think she asked me to outline
26 to the Committee, and I have no problem at all in doing that
27 -- my plan is to work with all the affirmative action
28 organizations, including ABCW. I want to get on record here

1 also as also working actively with the Hispanic Law
2 Enforcement Task Force, CCWA, MACA, and any other groups,
3 BASS, or any other groups, including the WLC, who is also
4 very active in my institution. They have been extremely
5 active, and we have a good relationship there.

6
7 My plans are specifically this. I met with the
8 three groups a couple of weeks ago, my advisor groups. I
9 asked them to get to me the recruitment and retention
10 recommendations, to me by the 15th of this month. My staff
11 then will put all these recommendations together. I've
12 already scheduled a meeting. I did this a week ago,
13 scheduled a meeting on August 28th with all the organizations
14 again in order to solidify the recommendations which will
15 best benefit Sierra on laterals and promotions, in all areas,
16 not just custody staffers. There's many areas that we need
17 to be heavily involved in recruiting and balancing the
18 workforce. I think balancing the workforce is extremely
19 important.

20 In the meantime, I also intend to put out a letter
21 in writing from what I call my communication to all staff,
22 it's called "From the Top" at the institution that we get out
23 to all employees when I have something very important to
24 point out to them. And what I want to make sure that we do
25 is that we don't polarize various groups within the
26 organization and make the hard feeling develop, or something
27 like that. I'm going to be asking everybody's assistance,
28 and anybody of any ethnicity or gender to assist me in the

1 recruiting and retention at the Sierra Conservation Center.

2 I have activated the EEOAC that was not active when
3 I got there. They've become active over the last three
4 months. There's nine active members there, and they've
5 already given me some written recommendations in regards to
6 recruitment and retention.

7 In addition, back in February and March, I asked my
8 affirmation action officer to specifically train more EEO
9 counselors at the institution because we have over 1100
10 employees. We have four EEO counselors. I now have 26
11 trained EEO counselors. And what that means is, a manager of
12 1200 employees and 6,000 inmates, it gives me a better feel
13 and know of issues that may be occurring out there that I may
14 not be aware of if I don't have the employees out there able
15 to tell me what's going on.

16 In regards to the 19-year lieutenant that was
17 changed from his day shift, it's not my policy normally to
18 assign lieutenants. I did not change the lieutenant. The
19 Captain and the Central Operations Associate Warden changed
20 the lieutenant.

21 There was several other changes that occurred that
22 I found out about later that I disagreed with, and we took
23 steps to do that, to make sure that we come back into making
24 sure that we have the balancing of the shifts, which is very
25 important.

26 On the food manager issue, I was assured I don't
27 know how many times that there was nothing written in that
28

1 personnel file. And as I told Ms. Barry, I'm personally in
2 the morning, I'm going to go back and check it. She is now
3 at NCWF, and I'm going to personally call the acting Warden
4 there to look at that file, because there's nothing to go in
5 a personnel file without my approval, and I did not approve
6 anything to go into that personnel file. The food manager
7 made a mistake, and it was a pretty serious mistake in one
8 way, but it was done with good intentions, and she was to be
9 verbally instructed not to let those kind of things happen
10 again. So, I want to make sure that there's nothing in that
11 personnel file.

12
13 I'm sorry to hear that. And this is not the place
14 to know about that, and I was not made -- I had personally
15 interviewed that person when she left, and she did not
16 mention anything in her personnel file. So, I've got to
17 double-check that. I won't say it's not there, because
18 sometimes things get in there without Superintendent's
19 knowledge.

20 With regards to my wife, she was a two-year
21 employee. She did interview with the Case Records Manager.
22 She did interview with the Captain. I made sure, as I did at
23 Chuckawalla, to stay out of that, to make sure that I did not
24 imply in any way, step or measure. I'm very well aware of
25 the fact that I wanted to make sure that the books were open;
26 anybody can come down there and check the interviews. They
27 can check the candidates that interviewed for the exam. It's
28 open. I'm sure my personnel office has that, and I assure

1 the Committee that there was no nepotism involved.

2 I'm not going to sit here and go over her many
3 qualifications because the supervisors did that when they
4 made a recommendation to hire her.

5 I am not aware of any other candidate that was
6 recommended for hire besides her.

7 And again, I've checked with the Case Records
8 Manager that did the interviewing, and she said there was no
9 other candidate. The only person I did not check with is the
10 Captain, and he's off on three weeks' vacation. And I assure
11 the Committee I will check to make sure that there was not
12 another candidate recommended at that time, because it may
13 have played a different role. But I am not aware of any
14 other candidate that had been recommended for the job.

15 CHAIRMAN ROBERTI: Were you Warden when she
16 originally was --

17 MR. SMITH: At Chuckawalla, yes, sir.

18 CHAIRMAN ROBERTI: Who was Warden when she was
19 originally hired?

20 MR. SMITH: I was the Prison Manager at that
21 time, yes.

22 CHAIRMAN ROBERTI: You're saying you did not
23 participate?

24 MR. SMITH: In the oral, no, sir. That's something
25 at the Office Assistant IIs; it's a beginning level. The
26 State Personnel ran the Qualifications Appraisal Panel Board
27 that she was qualified.
28

1 CHAIRMAN ROBERTI: What department?

2 MR. SMITH: Personnel Board.

3 CHAIRMAN ROBERTI: Who advertises the opening? How
4 is that advertised?

5 MR. SMITH: At that time, the New Prison
6 Construction Branch in Sacramento.

7 And this, I believe she tested on an open exam in
8 the county below Blythe -- Imperial. I think she went down
9 to Imperial and transferred her eligibility.

10 I want the Committee to know, and I want Ms. Barry,
11 as I assured her out there, and I fully intend to make every
12 effort available from my level down and make sure my
13 administrators make sure that we try to improve upon a
14 balanced workforce, that we make some -- I think we can make
15 some significant steps, and we intend to do that.

16 I've kind of lost my train of thought, but anyway,
17 that's -- I want to make sure that the Committee understands
18 that.

19 If I'm sitting here, telling the Senators that,
20 it's on record. I understand that. It's in writing, and I
21 hope that people understand that.

22 CHAIRMAN ROBERTI: Senator Garamendi has written
23 us, basically very much concerned about the lack of
24 attention, as he puts it, to the spillage and discharge
25 affluent that occurs from the prison, or the Conservation
26 Center, into the town of Jamestown. He indicates that he has
27 repeatedly tried to do something in this area and has been
28

1 unsuccessful.

2 Can you speak to that? Do you have proposals to do
3 something for the community and neighborhood?
4

5 MR. SMITH: Well, yes, sir.

6 Again, that was something, I guess, according to
7 Senator Garamendi, that he's been working with the Department
8 on for the last couple of years.

9 I had a spillage in January, and what that was, was
10 not from the sewer plant per se, but that was from a -- where
11 the inmates had jammed up the sewer line with clothing. We
12 had an overflow, and it spilled into -- it's Lake Tulloch
13 there; it's not the city of Jamestown.

14 By the way, I'm a property owner in that area also.
15 I live down there, so I did feel a lot of heat from that.

16 But there's some very significant steps that I feel
17 that I, as a manager there, and getting into the issue, have
18 taken, and also have the strong support of the Director in
19 regards to the sewer plant.

20 Some of the things that I've done is, number one,
21 we went in and put spikes into the plumbing chases so that
22 the inmates could not flush clothing down the toilets.
23 That's number one. We've done that.

24 Number two, we had a problem in going over the
25 500,000 gallon limit last year. As of this year, we have not
26 exceeded that limit whatsoever. In fact, in the month of
27 June, we used 382,000 gallons of sewer per day, and in the
28 month of July, we just got that report in, it was 402, well

1 below.

2 We've implemented some water saving devices based
3 on the Governor's water saving program, plus my sewer
4 problem. We've put in -- in the toilets, instead of using
5 seven gallons to flush, we now use -- they use 3½ gallons.
6 Flushometers is what they're called.

7 We're going in to control the showers in all the
8 units. We're going to put in what's in hydroguards in there
9 so that we can control that.

10 We started construction this week on an additional
11 60 acre feet. It's a sewage pond which holds 40 acre feet,
12 plus another 20 acre feet by raising the levels of some of
13 the other ponds in order to increase the holding during wet
14 weather, in case of the 100-year rain, which is supposed to
15 be -- I'm not really a sewer specialist, but I think I'm
16 becoming to get one. But those are some of the things.

17 The Director, personally -- I believe in Senator
18 Garamendi's letter he asked for a verbal commitment from me
19 and something in writing that we are strongly committed, the
20 Director has assured me that we've made that an extremely
21 high departmental priority, and the Director has told me that
22 he will personally write Senator Garamendi a letter, advising
23 him that we are proceeding with all of the plans, from the
24 sewer plant study that we just completed on August 1st, and
25 we're going to try to get funds in the '91-92 budget year, in
26 order to correct all the deficiencies in that study.

27
28 CHAIRMAN ROBERTI: Thank you.

1 Back to the points which Ms. Barry raised, we, too,
2 are very concerned about equitable employment opportunities,
3 especially among our state services.
4

5 Whatever the reason, I think probably the numbers
6 are low, and that's not to say it's your fault, but I tend to
7 think that sometimes there's lack of pushing affirmatively --
8 I hate to use the words "affirmative action" because that has
9 so many cross currents of opinion about it -- but I mean,
10 going out and finding people because some areas, people just
11 feel uncomfortable with. They're sort of alien. It's away
12 from their turf, and you have to recruit. You have to make
13 affirmative efforts at recruiting.

14 So, I counsel you, this is important. I'm sure you
15 know it's important, an attempt to hire minorities,
16 especially at facilities where you aren't in a minority
17 population area. I think you have to make an extra special
18 effort.

19 We're not preaching to you; we know we have to do
20 it, too.

21 But I think the numbers are low. I'm not saying
22 it's your fault, but the numbers are low.

23 MR. SMITH: Yes, sir, and I am very well aware of
24 that.

25 I forgot one thing to tell the Committee, that I
26 had implemented even prior to being called.

27 Out of the last -- I had four lieutenant vacancies,
28 and out of all the interviews we had, we had 16 candidates:

1 15 white and one black. I only let my staff hire two people:
2 the one black person, who's well-qualified, and one white.
3 And I froze all the other hiring. I've done the same with
4 the sergeants and other areas until my staff and the people
5 that we're putting together can help recruit in those areas.
6

7 I've already told my staff that, hey, this is our
8 problem; this is everybody's problem. And until we can go
9 out and get the balanced workforce candidates, and get those
10 people to interview and be able to do that in all the areas,
11 I'm not going to sign any hiring.

12 And you're absolutely right.

13 CHAIRMAN ROBERTI: That's encouraging, and that you
14 develop an affirmative program of recruiting.

15 MR. SMITH: Yes, and I would be glad -- if Ms.
16 Barry would like a copy of the memos coming out, I'll be glad
17 to send ABCW a copy of those. In fact, I don't think it's a
18 bad idea to make sure that I let all the organizations know
19 what we're doing.

20 CHAIRMAN ROBERTI: Are there any other questions?

21 Is there any other opposition in the audience?

22 Do I hear a motion?

23 SENATOR CRAVEN: Move Mr. Smith's nomination to the
24 Floor.

25 CHAIRMAN ROBERTI: Senator Craven moves
26 confirmation be recommended to the Floor.

27 Any observations from the Committee?

28 Secretary will call the roll.

1 SECRETARY WEBB: Senator Beverly.

2 SENATOR BEVERLY: Aye.

3 SECRETARY WEBB: Senator Mello.

4 SENATOR MELLO: Aye.

5 SECRETARY WEBB: Senator Petris.

6 SENATOR PETRIS: Aye.

7 SECRETARY WEBB: Senator Craven.

8 SENATOR CRAVEN: Aye.

9 SECRETARY WEBB: Senator Roberti.

10 CHAIRMAN ROBERTI: Aye.

11 The vote is five to zero; confirmation is
12 recommended to the Floor.

13 MR. SMITH: Thank you, sir.

14 [Thereupon this portion of the
15 Senate Rules Committee hearing
16 was terminated at approximately
17 6:37 P.M.]

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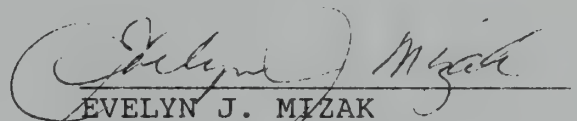
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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of August, 1990.


EVELYN J. MIZAK
Shorthand Reporter

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APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR WILLIAM CRAVEN, Vice Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

DONALD S. PRESSLEY, General Counsel
Agricultural Labor Relations Board

LARRY MALMBERG, President
Peace Officers Research Association of California

JERRY MATTHEWS, Legislative Advocate
California State Firemen's Association

DOLORES HUERTA, First Vice President
United Farm Workers

JACK HENNING, Legislative Advocate
California Labor Federation

DENNIS LOPEZ, Legislative Advocate
Mexican-American Legal Defense and Education Fund

SAM A. EGIGIAN, Member
California Integrated Waste Management Board

ARDAVAST KEVORKIAN, Member
State Energy Resources Conservation and
Development Commission

APPEARANCES (CONTINUED)

JACOB MARGOSIAN, Commissioner
Workers' Compensation Appeals Board

FRANCES GRACECHILD, Executive Director
Resources for Independent Living

DON GREEN, Member
California Applicants' Attorneys Association

RONALD FEENBERG, President-Elect
California Applicants' Attorneys Association

HOWARD H. LEACH, Member
Regents of the University of California

THEODORE J. SAENGER, Member
Trustees of the California State University

ASSEMBLYMAN JOHN VASCONCELLOS

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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: We will now go to Governor's Appointees with the proviso that Senator Craven is missing today. So, if it appears that a vote is necessary, as a courtesy to him, in passing any of these recommendations, we'll take the hearing now and then I would recommend that when we have a full Rules Committee with Senator Craven present, we would take the formal vote.

I don't know if that applies to anyone, but it could very well.

The first appointment is Mr. Donald Pressley, General Counsel of the ALRB. He suffered through our last hearing.

We're happy to have you with us again. Tell us why you feel you're qualified to assume or maintain this position.

MR. PRESSLEY: Thank you, Senator.

I think you have everything as to my qualifications to be General Counsel in the resume that's been previously provided to you.

I would point out that for 12 years immediately preceding my tenure at the ALRB, I worked either directly for or closely with labor organizations, representing employees, filing grievances, disciplinary actions, and negotiating collective bargaining agreements. As a result of this experience, I believe I'm very aware of the concerns of labor.

The last three years I have been with the ALRB as an attorney working in the General Counsel's office. This has

1
2 given me valuable experience in evaluating charges and
3 respondent defenses.

4 In March of this year, I was appointed by the
5 Governor to the position of General Counsel. As the
6 prosecutorial fact finder for the agency, I have insisted that
7 all investigations be conducted in a fair and impartial manner.
8 Once the region has completed its investigation, if a prima
9 facie case exists which has not been rebutted by the respondent,
10 we vigorously prosecute the violation.

11 As the Board's delegated agent for compliance, I have
12 also put together the best possible settlements that will
13 effectuate the purposes of the Act. Utilizing the NLRB's
14 philosophy, which is also that of the ALRB, we will consider the
15 risks inherent in litigation in order to reach early restoration
16 of peace in the fields as well as getting the monies owed to the
17 workers as quickly as possible.

18 I know that some people may disagree with my
19 decisions, but I can assure you that my judgment has always been
20 in furtherance of the mission of this agency, which is the
21 protection of the rights of agricultural employees.

22 With that, I'd be glad to see if I couldn't answer
23 any questions.

24 CHAIRMAN ROBERTI: Thank you, Mr. Pressley.

25 Are there any questions?

26 Why don't we hear testimony from those in support?

27 Did you bring any witnesses in support?

28 MR. PRESSLEY: I hope I did.

1 CHAIRMAN ROBERTI: Good, and we know this gentleman.
2 Please come forward.
3

4 MR. MALMBERG: Good afternoon, Mr. Chairman, Members.
5 Larry Malmberg, President of the Peace Officers Research
6 Association of California, the state's largest peace officer
7 labor organization.

8 We have had the pleasure of knowing and working with
9 Don for about twelve years in one fashion or another. At one
10 juncture, he was the administrator of our legal services plan.
11 Our legal services plan was -- is geared to defend officers in
12 disciplinary actions. He monitored other lawyers, monitored
13 cases, managed the case management.

14 We hold him in the highest regard as being an
15 advocate for the working men and women in California law
16 enforcement. We're sure that that attitude will translate to
17 the Agricultural Relations Board.

18 Thank you. We encourage your passing him out of
19 Committee.

20 CHAIRMAN ROBERTI: Thank you, Mr. Malmberg.

21 Next.

22 MR. MATTHEWS: Jerry Matthews, California State
23 Firemen's Association, representing the largest fire
24 organization in the state.

25 We go one step further with Don than Mr. Malmberg
26 did. Don was a firefighter for four years while he worked his
27 way through college in the county of Merced. He worked his way
28 up to engineer.

1 We could only echo his comments that -- Larry's
2 comments, that is -- that we're wholeheartedly supporting of Don
3 Pressley. We know him to be a fair person, a man of his word,
4 and we urge his confirmation.

5 CHAIRMAN ROBERTI: Thank you very much, Mr. Matthews.
6 Is there anyone in opposition?
7

8 MS. HUERTA: My name is Dolores Huerta, First Vice
9 President of United Farm Workers.

10 I wanted to say, first of all, that my opposition to
11 Mr. Pressley, I want the Senate to know, is not a person one. I
12 find him to be a very personable person, and have dealt with him
13 recently.

14 Unfortunately, what we're talking about here is much
15 deeper than somebody that's very cordial and very nice. I think
16 Mr. Pressley is very cordial and very nice. I also know that he
17 has worked for the Peace Officers Association in the past. I
18 had spoken to some of their representatives at the April 5th
19 convention.

20 I think it's probably a lot -- a whole different --
21 it's a whole different setup when you're trying to defend
22 workers when you're fighting with the powerful agribusiness
23 interests in the State of California, you know, who brought down
24 a governor, Governor Jerry Brown, than when you're dealing with
25 government. And maybe that's what the problems have been.
26 But we do have to speak in opposition because -- and I'm not
27 going to repeat what I said here before in our last hearing. I
28 think gave all of the Senators a packet that had quite a bit of

1 information and copies of correspondence that backed up our
2 position in terms of why we thought Mr. Janigian and
3 Mr. Pressley should not be confirmed.
4

5 But basically, the conditions of workers, as I said
6 before, have just deteriorated tremendously to almost the point
7 of no return. We're now having the conditions where workers are
8 being threatened, physically threatened if they support the
9 Union, and it's very hard to get any recourse to help them.

10 Basically the tactics that the growers have used with
11 the cooperation of the ALRB is just one of delay, and delay, and
12 delay, so the workers never get justice.

13 By the way, we've had more movement just since these
14 hearings have been taking place. There have been more things
15 that have happened in the ALRB during the course of these
16 hearings than had happened in all of the months before it. And
17 I suspect that after the hearings are over, that things are
18 going to slow down to a crawl again.

19 We did get some of those ballots counted that we
20 talked about before. However, we still have some of those
21 companies where the ballots are not counted. The one election
22 that I mentioned before that we had had, held in May of 1989,
23 Furakawa, for 500 strawberry workers, that has not yet been
24 certified, that election has not been certified as of yet. The
25 hearing was held in October of 1989. In two more months, it'll
26 be a year. Those workers have now gone through two picking
27 seasons without any relief.

28 There's one company that I mentioned before, and I

1 had given you a list of all of the unfair labor practices,
2 Sunnyside Nurseries, where the types of unfair labor practices
3 that were committed there were: physical assault on some of the
4 female workers; firing workers because they were trying to get
5 their contract; intimidation of the workers; changes in wages;
6 hiring labor consultants as private employees, which is clearly
7 against the law; company involvement in an unsuccessful
8 decertification attempt. We won the decertification attempt,
9 but we still have to get a complaint against that company, even
10 though at this point, I think there's something like 40
11 outstanding unfair labor practices.
12

13 The Board did issue a complaint for not allowing us
14 to take access, which we're allowed to take. But in terms of
15 all of these multitude of unfair labor practices that have been
16 going on now for months -- I'm not talking about the last -- I'm
17 talking about for the last 6-7 months, these unfair labor
18 practices have been going on against the workers. We still have
19 to get any type of a complaint issued by the Board on Sunnyside
20 Nurseries.

21 I testified at length before about the unilateral
22 settlements that the Board makes without the participation of
23 the workers and the Union, and I gave you correspondence to
24 prove that at the last hearing, if you will look at that file.

25 Recently, since our last hearing, we did have
26 something new that happened, which -- where we had -- the Board
27 itself dismissed a petition for a decertification election at a
28 company called Sandyland Nurseries. The employer in this case

1 flew the personnel manager down there to El Centro to submit the
2 petition. The employees are not supposed to be involved in
3 decertification elections. The employer flew the person down;
4 the Board investigated. They did find out that the employer was
5 very heavily involved in this decertification attempt, so they
6 dismissed it.

7
8 Three weeks later, the same person, same
9 circumstances, they filed another decertification petition, and
10 instead of blocking the election, the Board went ahead and held
11 the election. Then they impounded the ballots.

12 Okay, well, we might say, well, there we have a
13 contract, you know. The Board impounded the ballots, and what
14 happens when they impound the ballots, they did the same thing
15 in another company called S&J, which is a subsidiary of the
16 giant Dole Company. They impounded the ballots on that election
17 last October or November. We still haven't gotten any word on
18 what happened with that impoundment. So, we're talking about
19 tying these cases up for months, and months, and months.

20 The Board -- the procedure that they use now, the
21 Union organizers have to do the investigations. The Board
22 personnel, most every time that workers file an unfair labor
23 practice charge, we get back a letter, and it says: you have to
24 give us more information. They are trained to do the
25 investigations, but they don't do them. They depend on Union
26 organizers to go out there and do the investigations. If we
27 don't do the investigations, if we don't bring all of the
28 information to the Board, then the cases are dismissed.

1 They say that they don't have enough to do [sic], but
2 as a matter of fact, they have very little to do, since they are
3 moving on the cases very, very slowly.
4

5 Many of the cases that they're now handling are cases
6 that should have been handled eight years ago, when Deukmejian
7 first got into office. They're barely taking them up now, and
8 the workers are just getting shafted everywhere that they turn.

9 The ALRB attorneys are very reluctant to prosecute
10 cases. We recently had a case where, up in Napa, where they
11 went in for an injunction against this one company, the Board
12 attorney didn't argue at all on behalf of the workers. It was
13 the Union attorney, and the judge, in his decision, noted that
14 he was giving the injunction based on the arguments of the Union
15 attorney, not based on the Board's.

16 There basically doesn't seem to be a lot of will to
17 enforce the law. And I don't know, I know that probably the
18 Governor's appointees reflect the Governor's position in terms
19 of the Agricultural Labor Relations Act, and maybe that's the
20 way that they -- the reason that they act the way that they do.

21 At this point, as we said before, we don't think that
22 the appointees are carrying out the intent of the law.

23 Farmworkers are getting very little protection. Workers just
24 don't know where to turn anymore. You know, when they complain
25 about their conditions, they get fired. If they organize, sign
26 up Union cards to go for an election, they get fired. If you
27 file unfair labor practice charges, you know, maybe somewhere
28 down the road there might be some hearings on these charges, but

1 everything is tied up for years and years and years. And so,
2 workers out there know they're very helpless at this point.
3 Workers, they can get exploited, companies can underpay them
4 less than minimum wage. They can do anything that they want and
5 get away with it. There's just -- it's almost a lawless jungle
6 out there for farmworkers, and it's getting worse.

7
8 So, we would ask that Mr. Pressley not be confirmed.
9 Let's hope that we can get another administration in here, and
10 maybe we can get some people who really are vigorously going to
11 try to enforce the law for farmworkers.

12 CHAIRMAN ROBERTI: Thank you, Ms. Huerta.

13 Next.

14 MR. HENNING: Mr. Chairman, Members, Jack Henning,
15 California Labor Federation.

16 We are strongly opposed to the nomination the
17 Governor has made. I personally have great respect for the
18 Governor. He's a man of personal integrity, but there are many
19 areas in which he simply doesn't understand the plight of
20 working people.

21 And that indifference, or lack of any feeling or
22 knowledge is reflected in the Industrial Welfare Commission
23 appointments. That Commission has savagely eliminated the
24 eight-hour day that was put into being by Hiram Johnson, a
25 Republican in the early years of this century. And we see it
26 also in his appointments to the ALRB.

27 The ALRB has been destroyed as a voice to protect
28 workers. It admits the existence, but it denies the function of

1 labor. That's the reality. The farmworkers have been decimated
2 by this hostile Board.
3

4 Now, the growers don't need protection. They have
5 the economic power. The workers in agriculture have nothing
6 without the Union. They're on their stomach begging for help.
7 The only help that the government has ever given them came
8 under Pat Brown when he put the minimum wage for farmworkers
9 into existence with a Democratic Legislature. And then his son
10 gave us the Agricultural Labor Relations Act. Before that, they
11 were nothing, absolutely nothing, in terms of rights, or
12 freedom, or any equality in determining how the wages and hours
13 should be determined.

14 The ALRA gave us the collective bargaining act and
15 equal representation, but the General Counsel's the great power.
16 It was one of Mr. Pressley's predecessors who was the great
17 voice of the Governor's administration. He did everything he
18 could to break the Union. And while that evil might not be
19 manifested in the present nominee, it's in the same tradition.

20 We want a Board that sympathizes with the workers.
21 The growers have all kinds of aid from government: subsidies,
22 water in the water field, price assistance. They have the
23 assistance of the great Department of Agriculture that's meant
24 to serve their economic needs.

25 What do the farmworkers have? They've got one thing,
26 that's all. They've got the ALRA. But the Board determines the
27 character of the ALRA. We don't like the Board. It's been
28 against workers, and we can't stomach the idea that this is

1
2 going to continue for another four years, no matter who the
3 Governor is.

4 We are opposed.

5 CHAIRMAN ROBERTI: Thank you, Mr. Henning.

6 Next.

7 MR. LOPEZ: Mr. Chairman and Members, my name is
8 Dennis Lopez, and I'm with the Mexican-American Legal Defense
9 and Education Fund.

10 We, too, oppose this confirmation, and I think the
11 previous two witnesses have alluded to the bottom line fact,
12 which is that farmworkers now understand that the ALRB is really
13 not protecting their rights, and we feel that it's of the utmost
14 importance that we get people in the ALRB who are going to
15 vigorously enforce the law.

16 CHAIRMAN ROBERTI: Thank you very much.

17 Is there anyone else who wishes to testify either in
18 support or in opposition?

19 Then Senator Petris, you have a question.

20 SENATOR PETRIS: I meant to ask Ms. Huerta a question
21 and I forgot it. I wonder if I could get her back up here.

22 Ms. Huerta, I notice that Mr. Pressley has been with
23 the Board since 1987 as Assistant General Counsel, and then
24 Deputy General Counsel, and now General Counsel. So, he's only
25 been in the number one spot since March.

26 Have you noticed any improvement since March in the
27 speeding up of counting the ballots, or any other function for
28 which he might be responsible? Or improvement in the

1 settlements?

2
3 Your paper and your prior testimony complained about
4 settling out cases for a fraction of their value without
5 conferring with the Union or any effort to communicate.

6 MS. HUERTA: Well, my first involvement with
7 Mr. Pressley was with one of these cases that I testified about
8 last time, with the Vessey Company, where the -- there was a
9 case that was evaluated at about 630,000, and when we went to
10 negotiate with the company, the company said, "Well, I've
11 already settled it with the Board. You know, they've already
12 agreed that I don't have to give more than 270,000."

13 We talked about that here last time, and Mr. Janigian
14 said that he didn't know anything about it. Mr. Pressley did
15 know something about it. But that was the deal that was made
16 without any of our involvement, so I don't think that anything's
17 going to change. I don't think that that's been signed yet, but
18 I think it was held up because of these hearings. Otherwise, it
19 probably would have been signed by now.

20 I don't -- I think that Mr. Pressley was with the
21 Board for a long time. If -- he had an opportunity in there to
22 make some kind of impact. He obviously didn't make an impact
23 when he was there; he hasn't made an impact since he's been
24 there since March. We don't see any kind of impact.

25 This Sunnyside Nurseries, most of these or a lot of
26 these unfair labor practices have happened since he's been in
27 charge. We still don't have a complaint there. And I don't
28 know what's holding that up. All of the -- you know, this is a

1 case where you've had, almost daily, you've got workers being
2 intimidated; you had workers fired; you had one female woman who
3 was one of the workers who was physically assaulted by the
4 employer. And yet, we don't have any complaint out from the
5 Board on this company.

6
7 It seems like where these companies have these big
8 anti-Union law firms, like Littler, Mendelson and Fastiff's firm
9 from San Francisco, then the Board is very cautious to act. And
10 this is one of those instances where they're represented by this
11 big law firm. It almost seems like they do the bidding of these
12 anti-Union law firms. You can also anticipate, when the company
13 lawyer says to you, "This is what's going to happen," it almost
14 -- I mean, they tell us what the Board is going to do, and the
15 Board does what they say they're going to do.

16 I have, as I say, been involved with him just for the
17 last few months, and this is my experience to date, that when
18 the Board attorneys [sic] say this is what's going to happen,
19 then that's what happens. They predict what's going to happen.
20 They're telling the Board what has to be done.

21 SENATOR PETRIS: So, what you're saying is, you don't
22 see any improvement.

23 MS. HUERTA: No, I haven't. I haven't seen any
24 improvement.

25 I think there's been some surface, you know,
26 movements that might look like there's going to be a change, but
27 I don't think there's going to be a change. There were some
28 surface movements made because of these hearings, but right --

1 definite changes, no.

2 The Board, their Board personnel is not trained
3 properly. They went into court, I believe, yesterday on this
4 company up in Yuba City that's been terrorizing the workers and
5 firing workers because they were, again, complaining about their
6 situation and signing Union cards, and the judge threw out the
7 case because -- I mean, he told them they had to come back
8 because their declarations were improperly written, and the
9 papers were properly served. They don't even have their people
10 trained properly.

11 SENATOR PETRIS: Have you shared this information
12 with the Union people who were here a while ago?

13 MS. HUERTA: Not with them specifically. I did speak
14 with one of their representatives at the AFL-CIO convention who
15 had approached me, and I explained to him, as I say, I'm not
16 trying to attack his character, his integrity or anything. I'm
17 saying maybe in his other position, you know, representing peace
18 officers, you negotiate with government.

19 That's a lot different when you're dealing with
20 government. You don't have government pulling, you know,
21 weapons out at peace officers and telling them -- or firing them
22 because they're trying to get a union. I think it's a whole
23 different animal.

24 I think to really stand up for workers against the
25 powerful agribusiness industry, you've really got to have some
26 tough people. And I don't think that Mr. Pressley's background,
27 or whatever it is, just for some reason he's not doing it.

1 SENATOR PETRIS: Thank you.

2 CHAIRMAN ROBERTI: Thank you, Ms. Huerta.

3 MR. PRESSLEY: May I respond?

4 CHAIRMAN ROBERTI: Yes, Mr. Pressley, you can
5 respond. Please do.

6 MR. PRESSLEY: First off, Mr. Huerta is a very busy
7 person, and she may be unaware that last month, we issued a
8 complaint in Sunnyside.

9 When this incident first took place as a result of
10 some strike activity there at Sunnyside involving a collective
11 bargaining agreement, there was what -- we felt some violations
12 did occur as far as access being allowed to the workers.

13 I request of the Board authorization to proceed in
14 Superior Court to allow for access. The Board felt that it was
15 not appropriate at that time because the employer had agreed to
16 limited access in the parking lot.

17 So, to set the record straight, we did seek
18 injunctive relief at that point, the General Counsel's office.

19 We did issue a complaint on two of the charges just
20 this last month. I think it was about three or four weeks ago.

21 There are 25 cases. Eight of those cases have been
22 deferred to arbitration and have exactly the same issues.

23 On Sandyland, that is a situation that is down in San
24 Diego. There was a decertification petition that was filed by
25 an employee.

26 The minute a decertification petition is filed with
27 our offices, we commence an investigation to see whether or not
28

1 there is any assistance by the employer. That's automatic.
2 That's one of the things that we do get into as far as
3 protecting the rights of the workers.
4

5 The investigators, before the UFW was ever aware of
6 the decertification petition, found out that the employer had
7 assisted and had transported the worker that was presenting the
8 petition to the office down to the region. They dismissed the
9 petition. The UFW then filed a charge, and 18 days later, they
10 filed another petition, the same workers, it just so happens.

11 A complaint has been issued as to the first petition
12 that was the employer's assistance. As to the second petition,
13 the election was not blocked because a determination was not
14 made by the regional director that that, the employer's
15 assistance in the first petition, had tainted the second one.

16 Again, Senators, the election matters are not within
17 the jurisdiction of the General Counsel. That falls within the
18 Board and the Executive Secretary.

19 All the General Counsel is concerned with is the
20 unfair labor practices and the prosecution of those practices.
21 We are the investigators. We do the fact finding for the
22 agency.

23 So, I have no bearing as far as election matters. I
24 cannot speak for why votes are not counted.

25 As far as the employees not utilizing the services of
26 our agency, I have a graph here that I think better depicts what
27 has occurred. The graph depicts that the activity level has
28 increased in the last year. We have 119 more charges this year

1 than we have had in the last year. It also shows that the
2 dismissal rate has dropped dramatically, and the number of
3 charges that have gone to complaint has increased by almost
4 twice.

5 We had last year at this time 32 cases in the
6 investigative stage that were over a year old. We now have only
7 two. So, we are attempting to process the charges as quickly as
8 possible and get a resolution for these people.

9 That's pretty much everything I have for you.

10 CHAIRMAN ROBERTI: Thank you, Mr. Pressley.

11 MS. HUERTA: Just one quick response.

12 CHAIRMAN ROBERTI: You have a response, then
13 Mr. Pressley will be able to respond again.

14 MS. HUERTA: Just one quick response.

15 Mr. Pressley said that he doesn't have anything to do
16 with elections. Actually, like on the Sandyland, it was the
17 same person, this decertification attempt, the same person filed
18 the second petition that had filed the first petition. And it
19 was his regional director, Mr. Foote, Tim Foote, who made the
20 decision to proceed with the election.

21 MR. PRESSLEY: That's right.

22 MS. HUERTA: And so, that's been delegated to your
23 staff.

24 MR. PRESSLEY: That's incorrect.

25 What happens is, because we have regions that conduct
26 the elections, once a petition has been filed, that individual
27 changes hats. He moves over under the jurisdiction of the
28

1 Executive Secretary to conduct the election.

2 The General Counsel has no other involvement, other
3 than to provide the investigators or provide the people to
4 conduct the election. That's it.

5 So, I have -- I could not even tell them what to do
6 as far as the election's concerned.

7 CHAIRMAN ROBERTI: Senator Petris.

8 SENATOR PETRIS: I'd like you to discuss or comment
9 on the complaint about unfair labor practices in the Sunnyside
10 case. Did you comment on that earlier?

11 MR. PRESSLEY: Yes, I did. That was the one that
12 just went to complaint. In fact, we had sought injunctive
13 relief.

14 SENATOR PETRIS: On one of them?

15 MR. PRESSLEY: There's 25 different charges. Two of
16 those charges went to complaint. Three were withdrawn by the
17 UFW. Six were dismissed. Five are in abeyance pending the
18 grievance procedure, and nine are still in the investigation
19 stage.

20 MS. HUERTA: The one that went to complaint was on
21 access -- well, two on access, because we have a contract. We
22 had a contract with that company. They are also represented by
23 Fastiff's firm in San Francisco. We had a contract with that
24 company. The company implemented their last proposal. They are
25 no longer paying dues, and the Board, with a lot of these
26 charges like the workers that have been fired, instead of filing
27 a charge on these -- a charge -- a complaint against the company
28

1 for firing these workers, they're saying you have to go back to
2 the grievance procedure. And that's what they're doing with a
3 lot of these cases.
4

5 Instead of going and filing a complaint against the
6 company for all of these things that they're doing, they say you
7 have to go back to the grievance procedure to handle these
8 cases, and they don't have to do that. You can go ahead and
9 file a complaint against the company for all of these
10 intimidations and harassment and firing of these workers.

11 MR. PRESSLEY: Intimidation and harassment are not
12 covered by the grievance procedure. Certainly it's --

13 SENATOR PETRIS: Who's responsible for the election
14 process after the ballots are counted?

15 MR. PRESSLEY: The Executive Secretary.

16 SENATOR PETRIS: In one case, they've been waiting
17 for a whole year.

18 You don't have any role in that at all?

19 MR. PRESSLEY: No, sir.

20 SENATOR PETRIS: You can't prod the Executive
21 Secretary?

22 MR. PRESSLEY: None whatsoever. He's under the
23 control of the Board.

24 SENATOR PETRIS: What's his name?

25 MR. PRESSLEY: Ben Allamano.

26 SENATOR PETRIS: Do you happen to know why the
27 ballots haven't been counted?

28 MR. PRESSLEY: Which election are you referring to,

1 Senator?

2
3 SENATOR PETRIS: The one that was held in August of
4 last year.

5 MS. HUERTA: Triple E.

6 MR. PRESSLEY: Probably Triple E.

7 SENATOR PETRIS: Triple E, yes.

8 MR. PRESSLEY: Senator, there's a process that has
9 been set up that allows for the challenging of the ballots. I
10 think it was explained to you last time when Chairman Janigian
11 was here.

12 After the challenge to the ballots has been resolved,
13 the ballots have been counted, the employer still has the right
14 to object to the election based upon conduct. There may have
15 been a strike situation; there may have been violence that
16 tainted the election. Those are his rights to object on that
17 basis, saying that --

18 SENATOR PETRIS: Do you know why it takes a whole
19 year to count them?

20 MR. PRESSLEY: No, sir.

21 SENATOR PETRIS: It's a good thing they don't count
22 our elections, or even the local school board in the smallest
23 school district.

24 I find that -- to me, that reflects one thing. I
25 mean, there's no other conclusion that I can draw: a contempt
26 for the worker, a hatred of the statute, and a determination to
27 subvert it. There's no possible other explanation, because they
28 know that if they stall it a whole year, then the employer files

1 his objections, to which he certainly is entitled under the law.
2 That's going to take more time.
3

4 And they know in a lot of these disputes it's an
5 economic one. The weapons and tools that the worker has are
6 extremely limited compared to the vast resources of the
7 employer. So, the name of the game is delay.

8 I just find it unconscionable. That's not your
9 jurisdiction. I just don't understand that part of the law, so
10 I'm speaking to somebody who isn't here.

11 I don't know of any other possible explanation. And
12 I don't know why some of the Board members -- don't they have a
13 right to talk to the Executive and say, "What's going on here?
14 We read in the paper there was an election 11 months ago. When
15 are you going to count the ballots?"

16 Doesn't anybody on the Board prod these people to do
17 the job that the statute says they're supposed to do?

18 MR. PRESSLEY: Certainly. I think that they are
19 doing their best in speeding up the processes.

20 I know that recently they have reviewed some of the
21 election procedures. They are changing the regulations to allow
22 for some more speedier resolution of these kinds of things. So,
23 I think they are attempting to do it.

24 SENATOR PETRIS: Is the delay due to poor
25 regulations or lack of them?

26 MR. PRESSLEY: I think that's part of it.

27 I think the delay is also, Senator, as a result of
28 the employer exercising his rights to challenge the ballots.

1 SENATOR PETRIS: But that's a year after the fact.

2 MR. PRESSLEY: That's right.

3 SENATOR PETRIS: The case we're talking about, the
4 Triple E case --

5 MR. PRESSLEY: Yes, sir.

6 SENATOR PETRIS: -- August, '89 election; August,
7 '90, finally counted, and the objections are promptly filed,
8 which we expect. And I'm not quarreling with that.

9 MR. PRESSLEY: I understand.

10 SENATOR PETRIS: I'm quarreling with the whole year
11 that it took for a relatively small number of employees.

12 I don't know, maybe all those ballots are radioactive
13 and they're afraid to touch them.

14 Thank you.

15 MR. PRESSLEY: Thank you.

16 CHAIRMAN ROBERTI: Thank you, Senator.

17 Is there anybody else who wishes to testify?

18 Then what is the pleasure of the Committee?

19 SENATOR BEVERLY: I'd be prepared to make a motion,
20 Mr. Chairman. In the absence of Senator Craven and some hint of
21 where the Members stand, I hesitate to do so.

22 I'll be guided by your recommendation.

23 CHAIRMAN ROBERTI: Well, let me find out.

24 SENATOR MELLO: Mr. Chairman, I recommend we put it
25 over until we have a full Committee, and then take it up for
26 vote only at that later date.

27 CHAIRMAN ROBERTI: Yes, I think at this point there
28

1 are not sufficient votes, and Senator Craven, obviously, does
2 want to register his position on this.

3
4 So, Senator Mello, we will follow your recommendation
5 and put it over until the next meeting.

6 SENATOR MELLO: I don't know what the degree of
7 Senator Craven's illness might be, so I would say until we have
8 a full Committee present.

9 SENATOR PETRIS: Why don't we give the Senator
10 adequate time? We don't want him to come back when he's sick.
11 Let's do it in December --

12 CHAIRMAN ROBERTI: Well, the --

13 SENATOR PETRIS: -- or January. He's not up until
14 March. He's got a whole year.

15 SENATOR MELLO: Do you know how many gray hairs
16 happen on these people that are waiting for confirmation? Their
17 hair turns gray over night.

18 CHAIRMAN ROBERTI: Senator Mello has request that the
19 confirmation be put over until we have a full house, for vote
20 only. I will check with Senator Craven. That, I think, is in
21 fairness to the Vice Chairman of the Committee, so we'll do
22 that.

23 SENATOR MELLO: Put it on calendar at that point.
24 Whenever you're assured that he's going to be here, we'll put
25 him back on calendar.

26 CHAIRMAN ROBERTI: We will place you back on calendar
27 on notice to you and to the people who are both in support and
28 in opposition.

1 MR. PRESSLEY: Thank you.

2 CHAIRMAN ROBERTI: The next appointment is Mr. Sam A.
3 Egigian, Member of the California Integrated Waste Management
4 Board.

5 Mr. Egigian, we'll ask you what we ask all the
6 Governor's appointees, and that's why you feel you're qualified
7 to assume this position.

8 MR. EGIGIAN: Mr. Roberti, Senators, I feel I'm
9 qualified for this position because I have 40 years of
10 experience in the solid waste business, which has been and is
11 involved in source reduction and recycling.

12 I've also experience in the equipment field related
13 to the solid waste industry.

14 I have been active in just about every phase of this
15 industry for the past 40 years. I feel that I can add much to
16 939 by my experiences and my involvement in my past business.

17 CHAIRMAN ROBERTI: Thank you, Mr. Egigian.

18 Is there anyone here in support? Is there anyone
19 here in opposition?

20 Do I hear any questions?

21 I received a number of letters in support of your
22 confirmation from a wide variety of people.

23 SENATOR PETRIS: May I ask a question.

24 CHAIRMAN ROBERTI: Yes, Senator Petris.

25 SENATOR PETRIS: There was a mistake in one or two of
26 the letters here which are in your support, I might add. One of
27 them identifies you as the nominee for the environmental seat,
28

1 and that is an error?

2 MR. EGIGIAN: That's an error.

3 SENATOR PETRIS: You would be an industrial slot.

4 MR. EGIGIAN: Yes, sir.

5 SENATOR PETRIS: But in the industrial sector, you
6 apparently have done a lot of work in waste management and
7 refuse removal, and have some concern and sensitivity about our
8 current problem and how we can handle it.

9 MR. EGIGIAN: Yes, sir.

10 About 20 years ago, I was on the Environmental
11 Quality Study Council of the State here, and we met for three
12 years. And of all the hearings that we had, one of our
13 recommendations were that board be set up to take care of the
14 problems that existed at the time, and they're just multiplied
15 by a hundred times 20 years later.

16 So, it'll be a pleasure for me to be a part of this
17 board and to contribute what I have to it.

18 SENATOR PETRIS: How long have you been on it?

19 MR. EGIGIAN: I was appointed about -- I'm about 30
20 days on the board.

21 SENATOR PETRIS: That's not enough time for you to
22 really find out how they're doing.

23 MR. EGIGIAN: We don't have a quorum.

24 SENATOR PETRIS: You don't have enough members yet?

25 MR. EGIGIAN: No, sir.

26 SENATOR PETRIS: This is a successor to the old
27 board.
28

1 Thank you.

2 MR. EGIGIAN: Thank you, sir.

3
4 CHAIRMAN ROBERTI: Last year, the Legislature passed
5 and the Governor signed a package of bills that established a
6 comprehensive program on redirecting the management of nearly 30
7 million tons of solid waste. The whole idea was an integrated
8 waste management program to integrate the treatment and the
9 programs that are developed. The primary emphasis of this
10 legislation and future bills that have come up is source
11 reduction.

12 I would like to know what plans you or the agency
13 have in the area of source reduction?

14 MR. EGIGIAN: Well, my plans and the suggestion to
15 this body will be to, first of all, find out if there's a way
16 that we can create a market for all these material that we are
17 going to be separating and recycling. As it is today, there's
18 not too strong a market for these materials. And so, one of our
19 first bits of work should be to involve ourselves in creating
20 markets that we can prepare for the people that separate this
21 material that will make it economically feasible to do so.

22 As it is today, much of what is being separated and
23 recycled is being stored and then taken to the dump, and it
24 costs the public more money, and it costs the people that
25 separate it more money. So, that is one of the most important
26 factors, I feel, to make this thing a complete success.

27 CHAIRMAN ROBERTI: Thank you, Mr. Egigian.

28 Do I hear a motion?

1
2 SENATOR BEVERLY: Move the approval of the
3 confirmation.

4 CHAIRMAN ROBERTI: Senator Beverly moves the
5 confirmation of Mr. Sam Egigian be recommended to the Senate.

6 The Secretary will call the roll.

7 SECRETARY WEBB: Senator Beverly.

8 SENATOR BEVERLY: Aye.

9 SECRETARY WEBB: Senator Mello.

10 SENATOR MELLO: Aye.

11 SECRETARY WEBB: Senator Petris.

12 SENATOR PETRIS: Aye.

13 SECRETARY WEBB: Senator Craven. Senator Roberti.

14 CHAIRMAN ROBERTI: Aye.

15 The vote is four to zero; confirmation is recommended
16 to the Floor.

17 Congratulations.

18 MR. EGIGIAN: Thank you. Thank you very much.

19 CHAIRMAN ROBERTI: I think we're going to break for
20 five minutes, then the next appointment is Ardavast Kevorkian,
21 Member of the State Energy Resources Conservation and
22 Development Commission.

23 [Thereupon a brief recess was taken.]

24 CHAIRMAN ROBERTI: Senator Mello is on his way down,
25 but I think we should get started because we have a number of
26 appointees to hear.

27 This is the appointment of Mr. Ardavast Kevorkian,
28 Member of the State Energy Resources Conservation and

1 Development Commission.

2 Mr. Kevorkian, we'll ask you why you feel you're
3 qualified to assume or maintain this position.
4

5 MR. KEVORKIAN: Thank you.

6 Mr. Chairman and Members, thank you for giving me the
7 opportunity to appear today and discuss my qualifications for
8 the position of Commissioner at the California Energy
9 Commission.

10 As you know, the Warren-Alquist Act requires that one
11 member of the Commission be an engineer or scientist and have
12 knowledge of energy supply and conversion systems.

13 I'm a registered professional mechanical engineer. I
14 have a degree in mechanical engineering from Rensselaer
15 Polytechnic Institute in New York. I've had a lengthy career as
16 a professional engineer, including several years with the Ralph
17 M. Parsons engineering and construction firm in Los Angeles.
18 The Parsons group is heavily involved in oil and petrochemical
19 industry, transportation, and electricity generation and
20 distribution. I worked on the oil and gas separation project in
21 Prudhoe Bay, Alaska, and the Aramco Gas Project in Saudi Arabia.
22 I have also worked on desalination plants in Mexico and in Saudi
23 Arabia, which are very energy-intensive.

24 I am now or have been a member of the following
25 professional organizations: the National Society of
26 Professional Engineers, the California Society of Professional
27 Engineers, the American Society of Mechanical Engineers, and the
28 American Society of Heating and Refrigeration and

1 Air-Conditioning Engineers.

2 I was appointed by the Governor to the Commission in
3 January of 1990. My current assignments include overseeing the
4 Commission's building and appliance efficiency standards,
5 research and development activities, such as the Energy
6 Technology Assistance Program and the clean fuels program, and
7 conservation programs such as the Farm Energy Assistance
8 Program. I am serving on two Commission committees overseeing
9 the review of two proposed power plants. Since I have joined
10 the Commission, I've been appointed to the Board of the
11 California Institute of Energy Efficiency and represent the
12 Commission on the California Utility Research Council.
13

14 These two particular committees that I am [sic], I'd
15 just like to explain something. One is with the San Diego Gas
16 and Electric natural gas-fired combustion plant, and two, the
17 Luz solar generation facilities. I'd like to say that part of
18 the San Diego Gas and Electric plant could include
19 desalinization if the site selected out of five is on the coast.
20 And of course, I have that experience.

21 Prior to being appointed to the Commission, I served
22 as the Executive Officer of the State Allocation Board from 1983
23 to earlier this year. During that time, the bond funding of the
24 Office of Local Assistance grew from \$500 million with a staff
25 of 43, to a bond funding of 1.6 billion and a staff of over 200
26 in the four offices. In addition to being responsible for the
27 overall functioning of the Office, I found that my past
28 experience as an engineer allowed me to provide insights into

1 construction contracting and implementation of energy
2 conservation designs that would reduce school operating costs.
3

4 My interest in conservation and solar energy extends
5 to my own home and commercial properties I own. To save energy
6 in peak loads, I designed and installed 19 solar collectors and
7 17 air-conditioning precoolers, and with PG&E installed a load
8 management system. I've integrated a fire protection system
9 into the solar system to extinguish roof and house fires.

10 I have distributed my resume that provides additional
11 information on my professional career.

12 In the seven months I've been working with the Energy
13 Commission, I have found that it is a tremendous challenge to
14 carry out the Commission's mandate to ensure adequate energy
15 supplies while also protecting the environment, public health
16 and safety, and promoting economic growth for the state. The
17 leadership of this Legislature and the California Energy
18 Commission have set a standard that other states and nations are
19 following. I look forward to continuing this tradition.

20 Thank you for this opportunity. I'll be happy to
21 answer any questions.

22 CHAIRMAN ROBERTI: Senator Mello.

23 SENATOR MELLO: Mr. Chairman, before the questions,
24 Senator Rosenthal had shown an interest in this appointment.

25 I wondered, Sergeant, when you called him, what was
26 his response? Is he coming down?

27 SERGEANT BRISTOW: No, he's not.

28 SENATOR MELLO: Thank you.

1
2 CHAIRMAN ROBERTI: Are there any questions of
3 Mr. Kevorkian?

4 Let me ask you a question. Right now, we are all
5 riveted to the problems in the Middle East and how it's going to
6 affect our reliance on various energy sources, but there may be
7 restrictions as far as the availability of gasoline to the
8 consuming public in California because of this crisis, or there
9 may be cost increases.

10 Has the Energy Commission given any thought or does
11 it have a plan, or is it thinking in terms of a plan, on how we
12 in California are going to address not only this but future
13 energy crises, especially as regarding the availability of oil
14 reasonably priced to Californians?

15 MR. KEVORKIAN: Well, I'd like to approach that
16 response, or respond to it, is that the -- since the last oil
17 problem we had back in the '70s, fortunately the people of the
18 United States were willing to get into conservation programs by
19 buying smaller gas consuming vehicles, and of course, a number
20 of other items that took place at that time. Those other items
21 especially are diversity.

22 At the time back in the '70s, we had oil supply
23 coming overseas mainly from the Middle East. Since that time,
24 as of today, we have oil coming into the United States from
25 probably about eight or ten countries. We have certainly
26 Prudhoe Bay in Alaska, which is delivering up to 2 million
27 barrels a day, which half of that comes to California.
28 California in itself has large oil fields in and around

1 Bakersfield, and actually the oil we have in California can well
2 take care of ourselves for a certain period of time.

3
4 If the crisis does get worse, we can import oil,
5 which we are, from various places: Indonesia, South America,
6 possibly some from the Middle East if that's controlled
7 correctly.

8 We have office within the California Energy
9 Commission called the Contingency Office. This particular
10 office I must certainly brag about. When I first came into
11 there and say what they do with -- at the time of the
12 earthquake, October 17th, they have a very good communication
13 network to find out what's happening with all these terrible
14 problems, and especially when we're talking about oil today.
15 They have found out, out of the 17 refineries we have operating
16 here in California, what their output is. We have a good supply
17 of oil, and right now the crisis is -- well, I'm not sure, other
18 than we're okay for now.

19 The U.S. strategic barrel reserves were nothing like
20 they were back in the '70s. Now we have over 570 million
21 barrels, which will give us more than a 30-day full adequate
22 supply for the whole country. Of course, if there were a dire
23 emergency, that money would be directed more to the military.

24 The Office has -- the biggest word, I will tell you,
25 that I have learned in the Office is conservation. Now,
26 conservation does a number of things. The biggest problem that
27 we have that I consider in the energy system right now seems to
28 be environment, pollution problems from all types of internal

1 combustion engines or fossils, and so forth. So, the Office has
2 a number of programs on secondary fuels for automobiles that are
3 less polluting, the renewable fuels, which is very good.

4 Renewable fuel factors are the hydro plants, the geothermal
5 plants, the solar plants, the photovoltaic plants, and, of
6 course, in the automobile, besides using a fossil fuel, a
7 hydrocarbon even if it's methanol, or getting out of there into
8 the ethanols, we still have electricity that we're looking into
9 for better batteries.

10
11 I believe the -- that California, let me not talk to
12 the full United States -- I believe that California is
13 definitely a leader, and fortunately the office that I'm with is
14 doing a tremendous job on energy conservation, on energy
15 efficiency, or reviewing our natural resources for good
16 planning, and I can't think of too many other things. I know
17 I'm bragging about the office, but I really mean it.

18 The California Energy Commission is really a God-send
19 with all our state agencies that we have. I'm happy to be in
20 that particular office, and I think I can contribute.

21 CHAIRMAN ROBERTI: One other question is, in light of
22 the Middle East problems, there's been some accusation that oil
23 companies have engaged in price gouging.

24 A, what's your opinion of that? And B, if that is to
25 happen or were to happen, do we have any contingency plans in
26 this area?

27 MR. KEVORKIAN: The only discussion I'd like to bring
28 up on that is bring up another issue.

1 Back in the '70s, yes, there was price gouging or gas
2 lines. At that time, we were really caught not being able to
3 handle that problem.
4

5 Today, the amount -- there is an increase in
6 gasoline, whether it be seven or fifteen cents. And it's
7 unfortunate for the poor people who have a problem, you know,
8 getting fuel to go to their job and so forth.

9 But I also see the greater risk that the United
10 States faces by sending over our military forces over to the
11 Middle East.

12 I will only say that if the word that the media has
13 put out is price gouging, there's also another word out by the
14 radio and some of the newspapers that they identify gas
15 stations which are not gouging as much as the others, so the
16 people can go to the ones that are paying [sic] less.

17 In the final statement here I would say that we have
18 a funding program called PVEA, Petroleum Violation Energy Act,
19 that provides money to the state to be used for energy programs.
20 That funding right now is down to a million dollars, plus or
21 minus, it's very, very low. I would say that these oil
22 companies, if they're the gougers, the oil gougers, they're
23 going to be audited, and that PVEA program will be reinstated.

24 I can't say how our office could control the oil
25 companies going up and down in price, but I will say we are
26 aware of it, and we are looking for alternate fuel systems or
27 alternate methods, for instance, in renewables, where instead of
28 electricity and fossil fuel-burning power plants, renewable

1 plants such as the solar, the wind, the photovoltaics, they all
2 contribute to a nonpolluting type of electricity. So, that's --
3 and hydroelectric and geothermal.
4

5 CHAIRMAN ROBERTI: I have no other questions.

6 Does anyone else have questions here? Senator
7 Petris.

8 SENATOR PETRIS: On partially the same subjects, in
9 light of the oil crisis, is the Commission looking long range to
10 encouraging alternatives in a more specific way, including the
11 restoration of the tax credits? We offered tax credits for
12 solar energy, for example, then we took them away.

13 MR. KEVORKIAN: That's right.

14 SENATOR PETRIS: We also dismantled nationally just
15 about every effort that we made in the direction of
16 alternatives, and now we've got this crisis, and we're going to
17 probably take another look and dust them off and then go back to
18 sleep again.

19 What, if anything, is the Energy Commission doing to
20 lead the state into reviving some of those programs?

21 MR. KEVORKIAN: Our office, with the utility
22 companies, have set up a what's called the blueprint on
23 collaborative effort.

24 Now, there's two parts of electricity which -- I'll
25 talk about electricity first and then I'll get into the fuels
26 second. With the electricity, there's the electricity supply,
27 which is put together by the utility companies. And then
28 there's the demand side, which are the consumers, you and I are

1 consuming. On the demand side, which is part of this
2 collaborative effort, the utility companies are getting into
3 offering more and more incentives for people to buy less
4 consuming energy devices in appliances for your home, your
5 refrigerator, your air-conditioner, your lighting, et cetera,
6 also in building materials, components for building materials.
7

8 In the area of the fuels and so forth, we are and
9 have been looking into alternative fuels, going into natural
10 gas, or a compressed natural gas for vehicles, going into
11 methanol-ethanol. But the main word I'll bring up again is
12 conservation. If you can get people educated, disseminate the
13 necessary information between the utilities and the CEC and the
14 legislative body, it takes a long time to get people to change
15 their habits, but if you can get them to conserve more, you're
16 not only conserving electricity and building less power plants,
17 you're making less pollution.

18 So, our office has been extremely busy in this area,
19 and we'll just go along with it.

20 As far as tax credit goes, yes, back in the '80s we
21 had a tax credit on solar for domestic hot water. It was 55
22 percent of maximum \$3500. I took advantage of that in 1980
23 myself. I would say that if new tax credits are set up,
24 possibly the Energy Commission would be -- no, the legislative
25 branch possibly could do it if it were in that vein, solar
26 business or wind, or whatever it is. I'm not too clear yet on
27 that issue.

28 SENATOR PETRIS: How much of an oil saving does your

1 work on the Commission show would result from conservation? How
2 barrels a year can we save from conservation, or a month?

3 MR. KEVORKIAN: I would rather say for the moment --
4 I'll extrapolate that if I can -- I'd rather say that
5 conservation, for instance, the Air Resources Boards have said
6 that we have to reduce pollution by a certain percent by a
7 certain number of years. And the collaboration effort is to
8 reduce energy production, electricity production, by a certain
9 percent.

10 If you take those percents, I would say, yes, they're
11 going to add up into the -- we're using now in the State of
12 California 2 million barrels a day, okay? One million of that
13 comes from Alaska, and the other million comes from within
14 California. There's a small -- it's not exact number; it's plus
15 or minus.

16 SENATOR PETRIS: Where is that being used? Is that
17 all automobiles?

18 MR. KEVORKIAN: It's used, that's all the
19 hydrocarbons that are generated, so it's gasoline and
20 electricity.

21 SENATOR PETRIS: We're not backing any effort for
22 organic fuels? Fuels based on the use of --

23 MR. KEVORKIAN: Oh, the biomass --

24 SENATOR PETRIS: -- vegetation?

25 MR. KEVORKIAN: -- and so forth, yeah, that's part of
26 the renewables.

27 The renewables, electricity-wise, I believe,
28

1 represent a -- it's still a low number, possibly about, well,
2 it's between 10 and 20 percent. I'm not sure, but I know it's
3 in that neighborhood.
4

5 SENATOR PETRIS: Are there any incentives to them,
6 any inducements from the state?

7 MR. KEVORKIAN: Well, the problem with renewables,
8 maybe there are some that I'm not too aware of. Well, let's say
9 that the state helps certain small businesses to get into the
10 biomass projects for those types of programs.

11 The savings are -- will come with both money and
12 pollution and environmental problem. The renewable energy is
13 definitely a real need, not just because of electricity, but we
14 have to get down with this pollution problem that we have in the
15 environment. This fossil fuel is the one that's causing most of
16 our headaches.

17 SENATOR PETRIS: Of the 2 million gallons a day, how
18 much can we save by conservation? How do we conserve? Are you
19 talking to the individual motorist to cut down the use of the
20 car?

21 MR. KEVORKIAN: Well, possibly that, by getting into
22 the transit systems, different types of transportation systems,
23 getting more people into their vehicles.

24 There are other incentives that I've brought up
25 before in home use, in residential, commercial building use, the
26 building industry is certainly involved in that.

27 SENATOR PETRIS: How much of the 2 million can we
28 expect to save?

1 MR. KEVORKIAN: I would say, let's see, if we took 2
2 million, that'd be 200,000, I would say 10 percent is a fair
3 number to consider.
4

5 SENATOR PETRIS: It's reachable?

6 MR. KEVORKIAN: Yeah, it's reachable.

7 SENATOR PETRIS: You mentioned electric cars. What
8 specifically is being done on that?

9 MR. KEVORKIAN: Well, what keeps the electric car
10 going, of course, is a battery, and they are using different
11 materials in generation of the batteries that will have a longer
12 life and hold energy longer.

13 SENATOR PETRIS: Who's doing it? Who's "they"?

14 MR. KEVORKIAN: The utilities are involved in their
15 own research program.

16 We fund, through some of our what we call ETAP
17 program, which is Energy Technology Advancement Program, to
18 companies that are experimenting with different types of
19 batteries, per se, or fuel cells.

20 SENATOR PETRIS: How much are we spending on that for
21 research?

22 MR. KEVORKIAN: It's not too much. I would say it's
23 somewhere in the neighborhood of \$5 million a year.

24 SENATOR PETRIS: How many companies?

25 MR. KEVORKIAN: How many companies? Oh, we have
26 probably -- you mean just the batteries or other?

27 SENATOR PETRIS: How many companies are working on
28 this, on the research? Is it all being done by the utility --

1 MR. KEVORKIAN: Of private companies, in that
2 specific area of batteries, I'd say there's probably about five
3 or six. But if you add the utilities in, they have their own
4 research programs because they're trying to get batteries out
5 there which are cleaner than natural gas or methanol or ethanol.
6

7 SENATOR PETRIS: What's the best product we have so
8 far? What are the performance characteristics?

9 MR. KEVORKIAN: The largest use right now is a
10 combination of methanol and compressed natural gas.

11 SENATOR PETRIS: Not the batteries?

12 MR. KEVORKIAN: Batteries are -- the batteries do not
13 have a long life. You have to stop and recharge. So, they're
14 making now hybrid vehicles that use batteries as well as
15 methanol.

16 SENATOR PETRIS: Can you give me a little more
17 information about the batteries. Are the automobile companies
18 financing research or engaged in it?

19 MR. KEVORKIAN: Yes, they are. Positively they are,
20 General Motors, Volkswagon.

21 SENATOR PETRIS: Are we doing anything to encourage
22 them?

23 MR. KEVORKIAN: We work with them on -- we know what
24 they're doing and they know what we're doing. If they come to
25 us for funding of some type for demonstration programs, we'll
26 gladly review the application. It's strictly a matter of money,
27 how much money do we have to put up.

28 A lot of them want to be the first one out there with

1 the best batteries.

2 SENATOR PETRIS: Well, they ain't going to make it,
3 because I just read in the last two months that Japan has
4 developed a battery --

5 MR. KEVORKIAN: I read that article.

6 SENATOR PETRIS: -- that takes 12 minutes to recharge
7 it. It's 20 times as powerful as ours, and they're going to be
8 in production with automobiles within the next 18 months to two
9 years.

10 I'm wondering what in the hell our people are doing?

11 MR. KEVORKIAN: Well, I don't know too much about
12 that battery. I'm not the person who designs the battery.

13 SENATOR PETRIS: Yes, but you know about ours.

14 MR. KEVORKIAN: Right.

15 SENATOR PETRIS: How do we recharge ours? Every 24
16 hours or every 10 hours? Every two hours?

17 MR. KEVORKIAN: Well, I would say the charge -- you
18 take a golf cart, for instance. The charge on a golf cart,
19 that's a small vehicle --

20 SENATOR PETRIS: Yes, I can't go to Oakland in a golf
21 cart from here.

22 MR. KEVORKIAN: I know. I would say that on a
23 vehicle, the charge time would probably be good for about four
24 hours. You could not exceed 50 miles an hour, probably 40 miles
25 an hour. Those are some of the constraints.

26 The research is overcoming this. Believe me, it has
27 to. That, again, is a conservation program because there's no
28

1 pollution that's coming out of the battery.

2
3 SENATOR PETRIS: Yes, well, we reached 40 and 50
4 miles a long time ago. There must be something better than that
5 now.

6 MR. KEVORKIAN: There may be. I'm not -- I haven't
7 been that close to the Energy Commission on these alternative
8 sources.

9 I do know about them, and I'll be more and more
10 involved with them as I work with the Commission.

11 SENATOR PETRIS: Now, with this crisis again,
12 shouldn't the Commission be out there, up front, encouraging
13 this?

14 MR. KEVORKIAN: We are encouraging that in this ETAP
15 program. Anyone who wants to come in who is an applicant, into
16 a -- we have a long, long laundry list of items that they are
17 willing to look into, demonstrate or do hard D&D, and we are
18 funding those programs.

19 SENATOR PETRIS: How much do you have for that?

20 MR. KEVORKIAN: As I said, the whole ETAP program, I
21 said 5 million. It may be more than that. I just don't know
22 the amount.

23 SENATOR PETRIS: Well, I was hoping we'd have a much
24 bigger goals than that.

25 In the '60s, I don't remember the year -- '66, '67,
26 '68 -- I had a bill that offered \$25 million to the first
27 company or individual -- that was a lot of money in those days
28 compared to now -- that would come up with a clean car. And the

1 focus was on the electric car. Maybe we should offer 200
2 million now, or 250 million as an award after they accomplish
3 it.
4

5 MR. KEVORKIAN: Senator Petris, I'll certainly look
6 into it a little more, the battery issue, and I'll get back to
7 you. I'll get some real honest facts and numbers to you,
8 because I'm just not on top of that.

9 SENATOR PETRIS: Yes, okay.

10 Thank you.

11 CHAIRMAN ROBERTI: Is there anyone else? Yes,
12 Senator Mello.

13 SENATOR MELLO: I wanted to ask a question regarding
14 what has happened now, of course, with the Middle East crisis.
15 We're put into a different mode to try to maintain energy
16 self-sufficiency.

17 Recently, there's a renewed effort to not only tap
18 our own oil, you know, in the underground, but also, the
19 Governor came out a few weeks ago supporting a new program for
20 getting oil that's off shore, offshore drilling.

21 Do you support the Governor in that?

22 MR. KEVORKIAN: Well, let me say what -- it isn't
23 supporting the Governor. Let me tell you what I know about
24 alternative energy resources that we must consider, even -- not
25 that we're talking about nuclear energy; we have a law against
26 it. We're not going to use that until we find a place for the
27 nuclear spent fuel.

28 We have enough oil here in the State of California

1 underground that can take care of our current status with this
2 deal going on over there in Iraq and Kuwait.

3
4 However, if it comes to an emergency need that we
5 have to find other additional energy sources, offshore drilling,
6 exploration doesn't mean that you're going to cause oil to be
7 pushed ashore. Of all the platforms that we -- I lived in Long
8 Beach for a long time -- of all the platforms that we have out
9 in the oceans surrounding California, the only one that we had
10 problems with is Santa Barbara. Of course, we shouldn't have
11 any problems.

12 But the others are the oil cargo ships. Those are
13 the ones that are having the accidents, not so much the offshore
14 drilling.

15 But I think at this time we have enough oil
16 underground to keep us going with our needs.

17 SENATOR MELLO: When you say underground, though, the
18 ocean is part of the ground, too.

19 MR. KEVORKIAN: Well, I didn't mean -- I meant
20 inland.

21 SENATOR MELLO: But do you support the Governor in
22 his effort, or do you not support him?

23 MR. KEVORKIAN: Well, that question is -- I would
24 support him in case of an emergency. If, five or ten years from
25 now, the oil is all stopped.

26 SENATOR MELLO: Do you consider this an emergency,
27 this Iraqi --

28 MR. KEVORKIAN: No, I don't consider this -- it's an

1 emergency as far as what this man is doing, but I don't think
2 it's an emergency as far as oil goes.
3

4 I think that the United States and the other areas
5 that we're bringing oil in from under countries is --

6 SENATOR MELLO: Why are we sending all the troops and
7 vessels over there if it's not for oil?

8 MR. KEVORKIAN: Well, it is for oil. I agree, it's
9 for oil, but I'm sure there are other political areas that I'm
10 not in that arena on.

11 SENATOR MELLO: So, you would, under this emergency
12 situation, support drilling off our shore line of California?

13 MR. KEVORKIAN: No, this is not -- to me, it's not
14 that much of an emergency problem yet.

15 SENATOR MELLO: Pardon?

16 MR. KEVORKIAN: It is not that much of a problem yet
17 to go out into the ocean at this time.

18 SENATOR MELLO: What is not that much of a problem?

19 MR. KEVORKIAN: The oil requirements or supply. I
20 don't think we have that problem yet.

21 SENATOR MELLO: What situation would you feel would
22 necessitate the drilling offshore in California?

23 MR. KEVORKIAN: Possibly, unfortunately, I can't
24 speculate, but some type of a terrible crisis, a war or
25 something like that, and you're forced to do certain things you
26 don't like to do.

27 SENATOR MELLO: I'm trying to find out whether you
28 agree with the Governor or not. So far you haven't --

1 MR. KEVORKIAN: Well, I'm not in agreement to do that
2 today. I feel that we have an adequate supply here in
3 California. I said that before. We have an adequate supply
4 coming in from other countries: Indonesia, South America. We
5 have a little bit coming from Mexico and, you know, other
6 countries that we also get it from.
7

8 SENATOR MELLO: Has the Energy Commission or yourself
9 personally communicated with the Governor about his position,
10 telling him that he was wrong and making a statement?
11

12 MR. KEVORKIAN: No, I did not communicate with
13 anyone.

14 SENATOR MELLO: Do you think the Energy Commission,
15 being the advisory commission it is to the Legislature and the
16 administration, should be at the forefront of our energy policy?
17

18 MR. KEVORKIAN: We are. I think we are.

19 SENATOR MELLO: You are by being silent on these
20 important issues?
21

22 MR. KEVORKIAN: I'm not being silent, Senator. I
23 said if it's a real emergency, I think that we have to consider
24 and explore everything. I think at the present time we don't
25 have that issue.
26

27 SENATOR MELLO: Well, you did a good job of dancing
28 around the question, but that's your prerogative. Maybe because
you're facing confirmation, it's hard to go against the person
who appointed you, but --

MR. KEVORKIAN: I think I went against him when I
answered by saying we wouldn't do it today.

1 SENATOR MELLO: Yes.

2 CHAIRMAN ROBERTI: There was an element of
3 disagreement, and we rarely get that out of appointments, no
4 matter who the appointee has been.
5

6 SENATOR MELLO: The people in our area, I think
7 there's been a lot of seepage from our offshore oil drilling
8 throughout the whole -- in the southern part of the state, in
9 addition to Santa Barbara.

10 There's another thing I wanted to ask you about.
11 What is your feeling about all these wind mills and wind energy
12 that we have in this state? Are they worth their salt or not?

13 MR. KEVORKIAN: They are worth their salt, and we
14 should continue on those alternate renewable systems.

15 SENATOR MELLO: Did we set a goal for 10 percent of
16 our energy to be provided by wind sometime, I believe, in 1990
17 or '92?

18 MR. KEVORKIAN: There are a number of percentages and
19 facts that I don't have those numbers with me, but whether it be
20 on, like, photovoltaics is a very expensive device for
21 generating wattage of electricity, but yet in package units are
22 ideal to be put out on farms to start and stop pumps as needed,
23 or sensing equipment, little package units.

24 When you consider those renewable energy systems,
25 yes, we should have goals to keep them. They are being financed
26 and funded for R and D.

27 SENATOR MELLO: Do you support coal burning as a
28 method of producing energy?

1
2 MR. KEVORKIAN: We have fluidized coal burning plants
3 now on cogeneration right here in California, and they are
4 taking away the pollutants with using all types of catalytic
5 units, and are using limestone especially before the stuff goes
6 out the stack, and they are efficient systems.

7 But they're polluting systems. All fossil fuels are
8 polluting systems. No matter how much you clean them up,
9 they're still polluting.

10 SENATOR MELLO: Thank you.

11 CHAIRMAN ROBERTI: Is there any opposition in the
12 audience?

13 Do I hear a motion?

14 SENATOR BEVERLY: Are you prepared for a motion?

15 SENATOR MELLO: I'm not happy with his answer on
16 offshore drilling. I am opposed, as I believe are most of the
17 people in my part of the state.

18 And secondly, I want to discuss this more with
19 Senator Rosenthal. He was not here. I expected him to be here
20 to ask some questions.

21 CHAIRMAN ROBERTI: Senator Craven is ill, so we don't
22 have a full complement. Consequently, we're putting also
23 Mr. Pressley over for vote only, and it's Senator Mello's
24 request on this one, too, until we have a full house. I expect
25 that will be next Wednesday. I certainly hope so.

26 Thank you, Mr. Kevorkian.

27 MR. KEVORKIAN: Thank you.

28 CHAIRMAN ROBERTI: Some people who wanted to testify

1 on the Margosian appointment have to leave at five.
2 Consequently, I will take that one up out of order. We will try
3 to expedite the remaining three appointments as quickly as we
4 can.
5

6 The next appointment is of Jacob Margosian,
7 Commissioner, Workers' Compensation Appeals Board.

8 Mr. Margosian, we'll ask you what we ask all the
9 Governor's appointees, and that is why you feel you're qualified
10 to assume this position?

11 MR. MARGOSIAN: I was appointed by the Governor to
12 the Workers' Compensation Appeals Board January the 4th of this
13 year. I've been gone a good part of the time because of illness
14 and surgery.

15 But one thing that I noticed about that particular
16 position surrounding injured workers is that a great deal of
17 difference of opinion. I think all my training, whether it's
18 formal education or my personal involvement in business, civic
19 affairs, politics, has dealt with more than the average
20 difference of opinion.

21 In June of '83, Governor Deukmejian appointed me as
22 Assistant Director of the Department of Rehabilitation. There
23 again, I experienced a great deal of difference of opinion in
24 terms of what is the future, what can be done to help disabled
25 people.

26 The one thing that I participated in and feel very
27 proud of are the record rehabilitations that the Department of
28 Rehabilitation is responsible for for the last five or six

1 years.

2
3 What I saw, and it's related to injured workers
4 because I think I can transfer my skills that I've learned in
5 the Department of Rehabilitation, that with the right training,
6 the right attitude in terms of people around disabled persons
7 and disabled persons themselves, the employer being prepared to
8 understand what the disabled person can contribute, disability
9 is not the question; ability is. We've trained these people and
10 put them to work in record numbers, Senator Roberti, and I'm
11 very proud of that. I'd like to transfer that to the Board
12 where I may help injured workers in that capacity.

13 As far as my education goes, I think it's really
14 sensitized me to differences of opinion, to appreciate, respect
15 differences, and turn those differences, find the common ground,
16 and turn that into a resource to pursue the goals that we're all
17 after.

18 In addition, I think I've got the ability to
19 recognize, analyze, and apply solutions to very complex
20 problems.

21 In my own personal business of 25 years, the home
22 furnishings business, certainly if we didn't satisfy the
23 customer, we wouldn't have been around that long, and that's
24 certainly dealing with a lot of differences. What do they say?
25 That there's no accounting for taste, and you certainly find
26 that in the home furnishings business.

27 In addition, you've got to deal with a number of
28 people when you're in your own business: vendors, other

1 dealers, subcontractors. And if we didn't develop a sustained
2 relationship for reliability, trust, and kind of a confidence to
3 work with, we wouldn't have lasted 25 years.
4

5 As far as my civic involvement, again, I experienced
6 a tremendous amount of difference of opinion, was able to
7 develop a common denominator, and then allow us, with our
8 differences, pursue the mission and goals of whatever effort we
9 were supporting.

10 I believe are the those are the kind of
11 qualifications that I would bring to the Board. I'm just back
12 on my feet, Senator, and been away for a while, but I feel I
13 could make a major contribution. I'm a public member. I bring
14 no legal background, but I'm learning, and I feel that I could
15 make a contribution in bringing a public perspective to the
16 Board.

17 CHAIRMAN ROBERTI: Thank you, Mr. Margosian.

18 Is there anyone in support? Please come forward.

19 MS. GRACECHILD: Hello. I'm Frances Gracechild. I'm
20 the Executive Director of Resources for Independent Living,
21 which is one of 28 independent living centers here in
22 California.

23 I am also a gubernatorial appointee to the California
24 Governor's Committee for Employment of Disabled Persons.

25 It's been my pleasure to know this man in a work
26 capacity for the last almost eight years.

27 I don't know how much you know about the political
28 history of Independent Living Centers, but the day Jerry Brown

1 left office and Deukmejian came in, we cried. We cried because
2 we thought we were the product of partisan politics, and that we
3 could only survive in a Democratic environment.
4

5 Well, we've all learned a lot in the last few years.
6 And if somebody would have told me that a devoted, Irish,
7 Democratic, Catholic Democrat who takes great pride in having
8 never voted for a Republican would be here, urging you to
9 appoint for six years a Republican to the Workmen's Compensation
10 Board, I would have said you were drinking.

11 But I am here in that capacity, and it's because I've
12 observed Jay in a number of very tricky situations in the
13 disabled community be able to listen and listen very quickly and
14 very carefully, and very intently, to what would ordinarily be
15 considered an adversarial philosophy or viewpoint to this
16 administration. And he was able to find in those arguments the
17 little bits of wisdom that he could take back to his own
18 political philosophy and fashion out solutions to some very
19 complex problems in the constituency that we serve.

20 If I may tell you one story, exactly how we met and
21 under what circumstances, I think it will make my point.

22 I was in Bakersfield about seven years ago in a
23 legislative committee meeting with the other gubernatorial
24 appointees for the California Governor's Committee for
25 Employment of Disabled Persons, and Jay was there. He was an
26 executive committee member at that time. I did not know him
27 very well; I had just heard the negative prophesy of what was
28 going to happen with the new administration.

1
2 There was an Assembly bill up, and it was being
3 promoted by the Governor's Committee for support. I don't
4 remember the number of the bill or even which one of the
5 distinguished Legislators was sponsoring it, but I remember it
6 said that any transit agency that gives free rides to the
7 elderly must give them to the disabled. There was almost
8 uniform support for that bill.

9 I rolled up to the microphone and opposed it, and I
10 opposed it for the following reason: I opposed it because I
11 said it presupposes that disabled people are going to be
12 dependent people on the state and will need free bus rides. If
13 we're working, we can pay for our bus rides. We may need a lift
14 equip, but we don't need a free ride, thank you, please, and do
15 not confuse us with dependent human beings.

16 Jay was so thrilled with my testimony that he wanted
17 to talk to me afterwards and pick my brain, and we found out
18 that we see the world in very similar ways, and we fashioned a
19 working relationship.

20 That is how Jay works. He listens very closely. You
21 won't find him yawning, falling asleep, or dashing out to make
22 phone calls in a meeting. He comes early. He comes prepared.
23 He stays late. He invites people later into the evening to talk
24 with him on these issues.

25 I am so impressed with him. I want to see more
26 people like this representing our administration.

27 There's so many other things I could tell you about
28 him, but it's late in the hour. You look like everybody wants

1 to go home this evening, so I will let that suffice, but only to
2 tell you, you have a marvelous opportunity here, and I would
3 like to see him confirmed.
4

5 Thank you.

6 CHAIRMAN ROBERTI: Thank you very much,
7 Ms. Gracechild, for your testimony.

8 Senator Petris.

9 SENATOR PETRIS: Maybe the time for tears isn't over.
10 Do you remember what happened to the Independent Living Centers
11 in this budget fight?

12 MS. GRACECHILD: I was here everyday. Yes, I was.

13 SENATOR PETRIS: You were part of the delegation of
14 wheelchairs that came up here?

15 MS. GRACECHILD: I was one of the arrestees. I will
16 be arraigned on August 23rd.

17 SENATOR PETRIS: The Governor wanted to wipe you out.

18 MS. GRACECHILD: He certainly did.

19 SENATOR PETRIS: Now, he's the guy who appointed this
20 gentleman.

21 MS. GRACECHILD: He was also the man that I called on
22 his sick bed that gave me some very precise strategies on how to
23 deal with that problem, and we got our money back.

24 SENATOR PETRIS: I know, but you had a lot of help
25 from a lot of people.

26 MS. GRACECHILD: We did.

27 SENATOR PETRIS: We wouldn't have got a nickel back.

28 MS. GRACECHILD: It was a bipartisan miracle, is the

1 way I describe it. And I think a bipartisan miracle takes both
2 sides of the political persuasion.

3
4 SENATOR PETRIS: Well, it's the kind of miracle we
5 don't even have to engage in.

6 That's such a disgraceful act that shines above all
7 the rest of them in the budget, to go after the displaced
8 persons and wipe out those living centers that have become the
9 model of the country. I mean, there's just absolutely no way to
10 justify it.

11 Do you know what the justification was? We have to
12 learn to live within our means.

13 Did you tell your members that at the Independent
14 Living Centers?

15 MS. GRACECHILD: Absolutely not.

16 I was -- I would say I was absolutely politically
17 traumatized by that decision. It seemed impossible.

18 SENATOR PETRIS: Let me take you beyond that.

19 The majority of the members of the Board to which
20 he's now being appointed have been pretty strongly anti-labor in
21 their decisions. We've had testimony in here from labor time
22 and again, time and again.

23 Now, this man is a good, decent man. I've known him
24 for years.

25 You drop him into that environment, he's going to
26 have to struggle to follow his conscience and survive.

27 MS. GRACECHILD: He will.

28 SENATOR PETRIS: The Governor has the control of that

1 body, of people reflecting his philosophy, going into the next
2 Governor's terms, maybe the first term and maybe as far as the
3 second. I don't remember the years. That puts us in a heck of
4 a bind.

5 MS. GRACECHILD: I'm sure.

6 SENATOR PETRIS: Do you understand what I'm saying?
7 In some ways I'm saying it's not fair to him to put him in
8 there.

9 MS. GRACECHILD: Right, but six months of this kind
10 of character, this kind of intelligence, what I'm trying to tell
11 you is, this man is really decidedly different from the swatch
12 of cloth that most political appointees are cut out of.

13 In ten years, I've been in the Independent Living
14 Center movement ten years, and I've come from other civil rights
15 movements and other very important parts of representing
16 disadvantaged people.

17 This man is the only administrative appointee staff
18 at Department of Rehab. in ten years that has ever come to an
19 Independent Living Center when they were invited, unless they
20 were ordered by their Director of their Department. This man
21 has come every time. He's gone out of his way.

22 CHAIRMAN ROBERTI: In ten years, you say?

23 MS. GRACECHILD: In ten years, yes.

24 CHAIRMAN ROBERTI: That would include two years of
25 the prior.

26 MS. GRACECHILD: Yes, it does, it does. And it
27 amazes me. It amazes me how passionate we can only become in
28

1 public circles when we're speaking about this issue, but on --
2 after five and on weekends, this man is there. He is committed
3 to this constituency.

4 I think --

5 SENATOR PETRIS: Well, the prior Director was in a
6 wheelchair. He couldn't get around as much for that purpose.

7 MS. GRACECHILD: Right. Well, no, he still gets
8 around. He's a personal friend of mine.

9 SENATOR PETRIS: He gets around plenty, I know that,
10 and he's now at the national level, maybe international.

11 Well, I wanted to know, where do you live?

12 MS. GRACECHILD: I live here in Sacramento.

13 SENATOR PETRIS: Are you going to be around to give
14 him a hand and encourage him when he gets bombarded by those
15 other --

16 MS. GRACECHILD: Absolutely. I'm politically bonded
17 to this man for life.

18 That may seem a bit -- you only have to put up with
19 him for six years; I'm stuck with him for life. He's earned it.

20 SENATOR PETRIS: If he's appointed and approved and
21 confirmed, he's going to need reinforcement.

22 MS. GRACECHILD: He'll get massive doses of it, and
23 he gets it from both sides. The political miracle goes both
24 ways.

25 SENATOR PETRIS: I'm sorry I don't have some of the
26 records we had before on some of the other appointees. He
27 doesn't have a track record in this job; he's been ill.

1 But the track record of some of the decisions of that
2 Appeals Board would make you cry.

3 MS. GRACECHILD: I'm sure it would.

4
5 SENATOR PETRIS: To me, they show the flavor and the
6 pattern of the Deukmejian administration. And I'll say it
7 again, I said it earlier: number one, not a failure to
8 understand or an inability to reach out, to put themselves in
9 the shoes of the blue-collar person, but an absolute hatred for
10 the blue-collar person. Breaking unions, such as the United
11 Mine Workers; destroying OSHA.

12 MS. GRACECHILD: I know all of this.

13 SENATOR PETRIS: Well --

14 MS. GRACECHILD: And I believe that that --

15 SENATOR PETRIS: We're talking about climate now.
16 I'm not talking about this nominee.

17 MS. GRACECHILD: Sure.

18 SENATOR PETRIS: You know the OSHA story. Even the
19 employers were aghast. They didn't ask for that. It caused
20 havoc among labor, among management, safety records and all
21 that, and he says well, the feds can take care of it. And
22 there's scores of carcinogenic substances that are facing us in
23 the factories in California that aren't even covered by the
24 federal law; they're not even protected.

25 So, I interpret that as a contempt and disdain and
26 hatred for the working person.

27 Now, that's the climate in which he's going to be
28 operating. My question is, can he survive it?

1
2 MS. GRACECHILD: Oh, yes. Jay does not villainize
3 the opposition. He will be as offended and as disgusted with
4 that kind of problem that you just described as anyone else, but
5 he will be able to talk to those people. I've never seen him
6 villainize the opposition, and I think that's something that all
7 of our Legislators and policy makers in this state, we're going
8 to have to move towards. We haven't got as much time as we used
9 to have for adversarial politics. The problems are too
10 life-threatening for us to posture and play with one another
11 that way.

12 And this man understands it. He is decent to the
13 bone, intelligent, and respect on both sides. I think he would
14 be perfect for that climate.

15 SENATOR PETRIS: Okay, now I'll remind you that
16 you're being recorded by the reporter, and I hope we don't have
17 to read the transcript back to you sometime in the future.

18 May I ask Mr. Margosian a couple of questions,
19 Mr. Chairman?

20 You haven't had an opportunity to be at any of the
21 meetings yet, actually, have you?

22 MR. MARGOSIAN: At the Board?

23 SENATOR PETRIS: Yes.

24 MR. MARGOSIAN: Oh, yes, I was there four months,
25 Senator Petris, and sat in on all the judicial sessions that
26 were called when I was there.

27 SENATOR PETRIS: Can you tell us about any decisions
28 you participated in?

1 MR. MARGOSIAN: I read a great deal of the cases as I
2 was doing the files, but because I was so new, and my fellow
3 commissioners were working on new legislation to develop the
4 regulations and to iron out some of the wrinkles, I didn't
5 really participate in that process because I was too new. But I
6 learned a great deal about where the new legislation is going to
7 take us.

8 SENATOR PETRIS: You've studied the statute, and you
9 know what the purpose of it is?

10 MR. MARGOSIAN: Right.

11 SENATOR PETRIS: Can you tell me in your own words
12 what your understanding of the purpose and the mission of this
13 Appeals Board is? Not the Board alone, but the basic underlying
14 statute.

15 MR. MARGOSIAN: The basic underlying statutes,
16 Senator, service the injured worker. That was the old law, and
17 that's the new law.

18 One thing we've experienced is that originally, the
19 law was intended to take the interaction at that level away from
20 kind of a tort action and leave it open to one that would
21 ascertain and identify the responsibility of the -- of the
22 employer.

23 It's become tort-oriented now. One of the things
24 that the new legislation is trying to do is develop more
25 arbitration, reduce litigation, and therefore really save a lot
26 of costs for the employee so that the employee can receive the
27 benefits that he's entitled to in a much quicker way. That's
28

1 the basic thing I see.

2 In terms of medical examiners, there's a situation
3 developing there where it's a much more -- it's a much more
4 streamlined way of medical examiners rendering their opinion,
5 Senator, as I understand it right now.

6 But I haven't really been back to the Board since the
7 latter days of April. I'm on my way, hopefully.

8 SENATOR PETRIS: You were appointed when? In
9 January?

10 MR. MARGOSIAN: January the 4th, yes.

11 SENATOR PETRIS: I guess we can't put this one over
12 'til January, can we? It's a little too late. Maybe December.
13 Give him time to work on some cases. Well, we can think about
14 it.

15 CHAIRMAN ROBERTI: I don't think I can.

16 When was Mr. Margosian appointed?

17 SENATOR PETRIS: January 4.

18 MS. MICHEL: You could put him over until December.

19 CHAIRMAN ROBERTI: Until December is a possibility.

20 SENATOR PETRIS: But then it won't have time to get
21 to the Floor.

22 CHAIRMAN ROBERTI: It would a rush job.

23 SENATOR PETRIS: A tight race.

24 In baseball, a tie --

25 CHAIRMAN ROBERTI: We've done it, and we could do it,
26 but it would be a rush job.

27 SENATOR PETRIS: -- a tie base goes to the runner;
28

1 right?

2 How about in Workers' Comp? Close question, tie.

3 Who gets it?

4 MR. MARGOSIAN: Always the injured worker.

5 SENATOR PETRIS: Always the injured worker, great
6 answer. That's a good start.

7 Maybe I'll have more questions later. Thank you.

8 CHAIRMAN ROBERTI: Senator Mello.

9 SENATOR MELLO: I have a couple questions and just a
10 comment.

11 Senator Petris asked whether or not you could survive
12 with this other group there. I think what I see wrong, and this
13 is not directly just at you, but at the entire Workers'
14 Compensation system and Board under Mr. Rinaldi from the
15 Department of Industrial Relations, they've been on a track of
16 trying to dismantle and not have this agency respond to what the
17 law is. That is, to provide benefits to injured workers.

18 So, I'm going to ask you a series of questions to see
19 what you have done as a member since you've been appointed in
20 trying to help eliminate the backlog.

21 Number one, how many unfilled positions are there for
22 administrative law judges?

23 MR. MARGOSIAN: That I don't know. That information
24 I don't know.

25 Like I said, I've been away four months, and as far
26 as I'm -- as far as I know, this Monday there was several
27 administrative judges sworn in at our headquarters in San
28

1 Francisco. I believe those positions will be filled.

2
3 SENATOR MELLO: Well, this has been ongoing. You say
4 seven have been sworn in just recently?

5 I want to ask Nancy if she can provide this
6 information for me after today's meeting, because I want to
7 know.

8 Over the years, there's been as high as 25
9 administrative unfilled positions for judges, and that reflects
10 the backlog and the time it takes to get these cases resolved.

11 Now, it's not only the judges. Every judge requires
12 a team of clerks and secretarial help. So, if they just filled
13 seven positions recently, it means that they've been operating
14 by not filling. There must have been some vacancies there, and
15 I just suspect that the vacancies have gone on even beyond that.

16 Another question I have that shocked me over the
17 years, I've been following this since I've been in the
18 Legislature. People have testified here that they measure the
19 amount of unopened mail, the backlog of mail, by feet. And I
20 couldn't understand what they mean. I've never heard of mail
21 being measured by feet, but they say yeah. In one office, they
22 have 250 feet, stacked up on top of each other, of mail that's
23 never been opened.

24 If I don't open my mail, I wouldn't even be here.
25 Neither would anybody else.

26 In order to further prove that that's happening,
27 there's been judges and others go in and have to open mail and
28 seek through all these boxes, and try to find doctor's reports

1 and other reports pertinent to the applicant's claim, and go in
2 and seek it. It takes hours and hours. Just imagine, 250 feet
3 of mail stacked up. It takes hour and hours trying to find this
4 mail in order to try to have information there.

5
6 Now, I'd like to ask you, is that a true statement?
7 Do we have unopened mail sitting around these regional centers
8 to that extent? Or has the mail backlog been eliminated?

9 MR. MARGOSIAN: I don't know if there's any mail of
10 that size and measured it and what the measurements are.

11 But I do know this, Senator Mello. In the past
12 couple of years, I think all of us know that we live in a
13 litigious society, and litigation has really accelerated in that
14 area. And part of that is due to the fact that the definition
15 of compensable injuries has been broadened, and what that does
16 is, that brings in a lot -- a much greater volume.

17 How that's handled, I don't know, because we don't
18 really handle that at the Board. We are kind of an autonomous
19 independent body that's housed with the Department of Industrial
20 Relations.

21 Now, what happens at the local level, how that's
22 addressed, I don't know, but I wouldn't be surprised if there's
23 a great deal of very intense activity there, because of the
24 nature of our society, so to speak. It's litigious, and also
25 because of a broadening definition of compensable injuries.

26 SENATOR MELLO: All right, so if you can try to
27 divorce yourself from the board, the fact that the Workers'
28 Compensation Board, that you are a member of, is charged by law

1 for implementing the act and protecting the rights of workers,
2 if there's a backlog somewhere, you'd think you'd start raising
3 hell about it. Start getting the show on the road, so to speak,
4 get things to start happening.

5
6 MR. MARGOSIAN: I think maybe, Senator Petris and
7 Senator Mello, that's one of the things I can do.

8 I started, I think, January the 7th. I was appointed
9 on the 4th, and I started the following Monday. And there's a
10 great deal to learn at that position, and it would have been
11 somewhat presumptuous on my part to try to begin to initiate
12 change.

13 That's one of the things I could do, Senator Petris.
14 I believe that we are faced with such a large challenge in
15 terms of our economy, the reduction of resources, in a sense the
16 threat to our environment that, regardless of whatever position
17 we come from, we've got to address that problem. And I will do
18 that. That will give me the strength and the foresight and the
19 fortitude to withstand that kind of atmosphere.

20 I'd like to be in that arena and make as much of a
21 contribution as I possibly can to solving that and addressing
22 that issue.

23 SENATOR MELLO: Here we are in August, though, in
24 1990. You've served now eight months, I guess, you've served
25 there.

26 MR. MARGOSIAN: I've been gone for four, Senator
27 Mello.

28 SENATOR MELLO: Pardon?

1
2 MR. MARGOSIAN: I've been gone for four of them. I
3 just went bypass -- I just underwent bypass surgery and a
4 fracture to my vertebrae.

5 SENATOR MELLO: So, you've served four out of eight
6 months.

7 MR. MARGOSIAN: Right, yes, sir.

8 SENATOR MELLO: At that point, have you not inquired
9 about the workload of the Workers' Compensation system to see
10 whether or not -- or do you agree there is some delays that go
11 on for injured workers in processing their claims?

12 MR. MARGOSIAN: Right, in the recovery process, that
13 was somewhat of a remote possibility for me.

14 But when you hear things of this nature, and you
15 realize that there's an administrative body to take of this, you
16 kind of -- that is, I wasn't in a position to really do anything
17 about it.

18 But that's one thing that we can certainly look at
19 when we get there, and we're a little more prepared, a little
20 better trained, and a little more experienced.

21 SENATOR MELLO: Over the years, I'll just give you a
22 typical kind of inquiries I get in my office, I have my district
23 offices down there.

24 When an injured worker calls my office, they're
25 really desperate. What is happening? That's why I think the
26 system is failing. They're desperate because they've been
27 injured. They've gone to a hospital, and no one has come to
28 respond to say, "Here, sign this paper. Get this claim or get

1 this going." So at this point, two or three months after the
2 injury, they're facing foreclosure on their home, unpaid bills.
3 The creditors are attaching things. Finally, in desperation,
4 they come to the Legislator's office and say, you know, "Please
5 help me."
6

7 We look at their case, and we give them, "Well, at
8 this point, I think you need some legal help." We refer them to
9 a legal person who specializes in this type of activity to try
10 to forestall them losing their homes and everything. It's
11 enough pain to go through the injury, let alone the pain that
12 goes through the process.

13 And that's why I think, when I respond to Senator
14 Petris, it's more than just surviving what's there. I think
15 somebody's going to have to become a leader to get in there and
16 shake the system up. Governor Deukmejian is not doing it.
17 Mr. Rinaldi's not doing it. I think they're doing just the
18 opposite, trying to stymie the system for being responsive. And
19 until we can get somebody who's going to turn it around, I don't
20 know where the blame lies.

21 I always say that when a problem exists in a large
22 entity, you have to blame the Chairman of the Board. And the
23 Chairman of the Board at this point is not the Chairman of your
24 Board, it's the Governor of the State of California. If they
25 want things to happen, it will happen.

26 I just think it's very frustrating for me as a
27 Legislator to have people come to any Legislator and on the
28 verge of losing their home, because the law says, Workers'

1 Compensation, they're supposed to be reimbursed fully for their
2 medical payments, lost wages, and whatever they're entitled to.

3 MR. MARGOSIAN: Senator Mello, no doubt there are
4 cases like that. And what we fail to see in so many instances
5 like this is the many cases that we service, and service on
6 time, and service properly.

7 And I feel that, give the opportunity, that I might
8 be able to address myself to that particular problem. I feel
9 it's imperative. I think there's a lot of changes that have
10 taken place, and I think we're just -- we haven't been able to
11 catch up with those changes.

12 No doubt, there are certain problems because there is
13 such a large number of injured worker cases that come to the
14 workers' compensation community. I think there's something like
15 200,000, if I remember the last figures I've seen. These are
16 hard to process.

17 One of the things that we're really facing, and I
18 think with Frances' testimony it would make sense here, is that
19 I feel that one of the reasons for your statement and the fact
20 that these happened, and these reports are accurate, is that the
21 system is too adversarial right now.

22 What I would like to see, one of the things that I
23 could contribute, Senator Petris, is my ability to take
24 differences of opinion, highly adversarial positions that are
25 inimical, that are harmful to servicing the injured worker, turn
26 them around into a more cooperative effort.

27 I don't say the lion and the lamb will lie down
28

1 together and satisfy their thirst at the river. But I think
2 something has to be done to reduce the adversarial level. And
3 this is a difficult thing, because there's a great deal of
4 vested interest, there's a great deal of pursuit, and I think
5 very legitimately. And I think somebody has to present that
6 opportunity to reduce the adversarial, to redevelop a much
7 larger common ground.
8

9 So, a cooperative effort, once the key players learn
10 that by servicing the best interests of the injured worker, by
11 the same time being fair to the employer, that this is where
12 those cases are going to minimize. They might even disappear
13 with that.

14 SENATOR MELLO: The bottom line is this. We have one
15 of the highest Workers' Compensation rates in the whole United
16 States, and we have the lowest benefits.

17 Can you answer me why that is happening?

18 MR. MARGOSIAN: I would be presumptuous if I tried
19 to, because I don't have enough experience in the area, but
20 that's one thing that's going to have to be addressed.

21 I think with the new legislation, and with the
22 highlighting of these problems, we're going to have to face
23 those issues. We're going to have to face those issues so
24 everybody in this room and people like yourselves are going to
25 be satisfied with the answers.

26 I think that -- I remember that information items
27 that used to come across my desk when I was Assistant Director,
28 and they all wondered what was happening in the workers'

1 compensation community. Very few people understand that's
2 happening, and it takes only an intense interest in Workers'
3 Compensation when you're an injured worker, or you're concerned
4 like we are. So, it's going to take a different point of view.
5

6 The one thing that I can contribute is the fact that
7 I will try to render a more cooperative posture over against an
8 adversarial one. As I understand it, the intent, the original
9 intent of the law, was to shy away, or kind of deflect away from
10 a tort situation and develop one that, within the workers'
11 compensation community, the injured worker could be serviced.

12 We saw what happened in the Department of
13 Rehabilitation when we serviced the needs of the disabled.
14 About two or three years ago, they started a supported
15 employment program. There was a great deal of controversy and
16 difference of opinion there, taking with people with
17 disabilities that were totally regarded as cul-de-sac, or
18 totally unavailable for gainful employment. We turned that
19 around. I was part of that movement.

20 And I want to do something within the workers'
21 compensation community as a public member, as a citizen, as a
22 person that's wondering. My God, one of my friends, one of my
23 family could be an injured worker, and I'd like them to be taken
24 care of under the law, under the letter and the spirit of the
25 law.

26 That's difficult now because of the adversarial, the
27 strong, intense adversarial position. And as a public member,
28 I'd like to make my contribution to that. I think I've done it

1 many times in the past, and I'd like to do it in the future.

2 A great deal of attention has to be paid to that
3 area, Senator Mello. It's not easy. I looked at it when I
4 first came there and wondered what I'm doing over here. And as
5 I got more and more into it, I realized that, hey, maybe I could
6 make a contribution here. It's going to take somebody like me
7 to do it. And whether it's me or somebody like me, I certainly
8 hope --

9
10 SENATOR MELLO: I want to thank you for your answers
11 to the questions. You seem to be committed to make the system
12 work and perhaps change it. It's going to be difficult, because
13 from the Director of that Department and, I think, from some of
14 your colleagues, they sure don't have that kind of commitment.
15 You might find yourself in a very lonesome position, or else you
16 might be a strong enough person to motivate others and get them
17 to change their position. I hope the latter becomes true.

18 Thank you, Mr. Chairman.

19 CHAIRMAN ROBERTI: Thank you, Senator.

20 Is there opposition in the audience?

21 MR. GREEN: Mr. Chairman and Members, Don Green
22 appearing on behalf of the California Applicants' Attorneys
23 Association.

24 These particular seven positions on the Workers'
25 Compensation Appeals Board are extremely important. We're not
26 talking about an administrative position. We're talking about a
27 judicial position. We're talking about somebody who rules on
28 litigation. It is already adversarial by the time it gets to

1 the Workers' Compensation Appeals Board.

2 He will be ruling on decisions that are made by
3 judges, Workers' Compensation judges. He will not be taking
4 testimony except in the most rare case. He will sit in a panel
5 of three, as does an appellate court, and he will be deciding
6 the case on the base of briefs that are submitted to him by the
7 employee through his attorney or her attorney and the employer
8 or insurance company through theirs.

9 This is not the kind of a position where he will have
10 discretion to try to reduce or increase litigation, unless, of
11 course, he decides against the injured worker or decides against
12 the employer, and thereby seeks to discourage litigation.

13 These are very, very important positions which
14 require a great deal of skill and understanding of questions of
15 fact and law.

16 Now, in our system in California, unlike the
17 Unemployment Insurance Appeals Board, you go to the line judge,
18 of which there are some 26 offices and at least 30 vacancies now
19 in the Workers' Compensation judges out there. But once that
20 judge has rendered a decision, either side if aggrieved can
21 petition for reconsideration to the Workers' Compensation
22 Appeals Board. And if aggrieved there, if they don't receive
23 whatever they feel is justice at that Board, then you go not to
24 the trial court but to the Court of Appeals of California.

25 With the Unemployment Insurance Appeals Board, we go
26 to the trail court, then to the Court of Appeals. Here, you go
27 directly to the Court of Appeals, then to the California Supreme
28

1 Court. So, it's an even more limited jurisdictional review
2 process than we have for our state agencies.

3
4 Therefore, I don't way to say more important, but
5 it's extremely important that the people who occupy these
6 positions are well-versed in Worker Compensation law, and
7 well-versed in Worker Compensation procedures.

8 We are very concerned as to this gentleman's
9 qualifications. And what I've heard him say here today about
10 the expanding influence of tort law in Worker Compensation, that
11 is not the case, as I think everybody here can attest. When
12 he's talking about increasing litigation, when you have 1.3
13 million injuries a year, and you have a total of 165,000 or
14 fewer cases actually going to hearing, you have a very small
15 percentage of cases that actually end up before a judge, and an
16 even smaller percentage of cases that ever get to this
17 particular level.

18 So, we are concerned about this gentleman's
19 qualifications for the Worker Compensation Appeals Board, and we
20 are concerned about the attitude that this particular
21 administration has had towards this Board since 1983.

22 I have with me today the President-Elect of the
23 California Applicants' Attorneys Association, Mr. Ron Feenberg,
24 who wants to say a few words about what we have been
25 experiencing over the last seven years, and what this means in
26 1990 concerning the next four years at least.

27 CHAIRMAN ROBERTI: Mr. Feenberg, yes.

28 MR. FEENBERG: Thank you, Senator Roberti.

1 This is a profoundly important appointment to the
2 people of the State of California, to the injured workers in the
3 State of California, and to both the applicant and defense bar
4 in the State of California.
5

6 This appointment, and the other two that are also
7 pending, are six-year appointments by virtue of the new Greene-
8 Margolin bill. That reform act, by making it a six-year
9 appointment, means that the appointees, once confirmed, will
10 serve for a greater length of time than potentially the next
11 Governor, whomever he or she may be.

12 It is very important to the workers of the state that
13 the appointee recognize and understand the function of this
14 judicial office. We are not talking about an administrator. We
15 are talking about, in effect, an appellate judge who must review
16 and know, acknowledge and understand the law and apply it to a
17 set of facts.

18 With all due respect to Mr. Margosian, he may have
19 been a fine administrator for his furniture company, but that
20 doesn't necessarily mean that he is knowledgeable and
21 understanding of law and its application.

22 The appointments by Governor Deukmejian in his 7½
23 years as our Governor have not shown any balance or sensitivity
24 to the interests of the injured workers in the State of
25 California. Unlike any other governor in the history of this
26 state, Governor Deukmejian has not yet appointed anybody from
27 labor, or who had an interest in the injured worker's needs and
28 rights to the Workers' Compensation Appeals Board.

1
2 As Mr. Green pointed out, the climate at the Appeals
3 Board has been one which has narrowly defined, conservatively
4 drawn and applied Workers' Compensation rules, not withstanding
5 the fact that the law requires a liberal application pursuant to
6 statute.

7 Senator Mello, you are correct. I practice in
8 Southern California, primarily in Los Angeles County, where we
9 currently have seven and will soon have nine Appeals Board
10 offices. I visit almost all of them. We are no longer
11 measuring mail by inches or feet; we're now into many, many
12 months, and in some offices, quarters in which mail has not yet
13 been opened.

14 In Los Angeles, at the largest board, the Los Angeles
15 board, new declarations of readiness to proceed, to access the
16 court, have not been assigned in 1990. They are still working
17 on mail from 1989.

18 Your question about new judges, the 1989 budget and
19 the Greene-Margolin bill appropriated 30 new judge teams to
20 service the injured worker in the State of California. None --
21 not one, not two -- none have been appointed.

22 Judge Petris [sic] talks about the climate. The
23 climate -- Senator Petris.

24 [Laughter.]

25 MR. FEENBERG: We are talking about judges today.

26 Senator Petris talks about the climate. The climate,
27 indeed, in this state is one of total insensitivity to the
28 interests of the injured worker.

1 We are very concerned about this appointment. We are
2 sorry that Mr. Margosian was ill for much of this year. We
3 wish we did have, to use a current Washington, D.C. phrase, a
4 paper trail to study and review what his feelings and his
5 philosophies are. We have no decisions which we can turn to.
6 That's extremely critical at this time in Governor Deukmejian's
7 term.

8
9 For these reasons we would urge that this Senate
10 Rules Committee strongly consider what Mr. Green and I have said
11 about Mr. Margosian, and we would urge that he not be confirmed
12 as a member of the Workers' Compensation Appeals Board.

13 CHAIRMAN ROBERTI: Thank you very much.

14 Is there any further support or opposition in the
15 audience?

16 Are there any questions? Do I hear a motion?

17 SENATOR BEVERLY: Is there a request to put it over?

18 CHAIRMAN ROBERTI: There is a request by Senator
19 Petris to put it over.

20 We'll put it over until we have a full Committee,
21 which will be shortly, I think, for vote only.

22 Now we will break for five minutes.

23 [Thereupon a brief recess was taken.]

24 CHAIRMAN ROBERTI: The Committee will come to order.

25 We have a couple of additional appointments. The
26 next appointment is Howard Leach, Member of the Regents of the
27 University of California.

28 And in addition, if the Sergeant will call

1 Assemblyman Vasconcellos, he wanted to be here to testify on
2 Mr. Saenger, Member of the Trustees of the California State
3 University. So, if you would of that, notify him that that will
4 be coming up shortly, I hope.
5

6 Mr. Leach, we'll ask you what we ask all the
7 Governor's appointees, and that what your qualifications are for
8 this position.

9 MR. LEACH: Thank you, Mr. Chairman.

10 Mr. Chairman and Senators, I have had a long-time
11 interest, an active interest, in education. I hold these
12 interests because I believe that education has been very helpful
13 to me in fulfilling my life. I also feel that education is the
14 most important tool for other people of California in providing
15 for young people fulfilling their lives, and also in providing
16 leadership for the future of our state.

17 My own educational background is that I attended
18 public school in Salinas, grades K-12. I attended Yale
19 University on a partial scholarship. I graduated with a degree
20 in economics. I attended Stanford Graduate School of Business.

21 I've been active in education activities over a long
22 period of time. I served for approximately 15 years as a member
23 of the Board of Trustees and Treasurer and Vice Chairman of the
24 Robert Louis Stevenson School on the Monterey Peninsula. I
25 served approximately 15 years as again Treasure and Vice
26 Chairman and member of the Board of Santa Catalina School on the
27 Monterey Peninsula. I served for approximately 8 years as a
28 member of the Board of Trustees of Scripps College, Clairmont,

1 California.

2 I was a member of the bipartisan group in Monterey,
3 Santa Cruz and San Benito Counties that was instrumental in
4 locating a branch of the San Jose State College in Salinas to
5 provide educational facilities there for people who could not
6 afford to travel or take the time from their jobs to travel to
7 San Jose for those courses.

8 When I was a member of the Board of Trustees and Vice
9 Chairman for the Community Hospital, Monterey Peninsula, we
10 instituted a joint program with Hartnell College, a community
11 college in Salinas, for nurse training to help alleviate the
12 nurse shortage in our area, and also to provide jobs for people
13 in that area.

14 I was a founder and director of the Bruce Church
15 Educational Foundation, which was formed for the purpose of
16 providing scholarships for students, high schools students, in
17 the Salinas Valley.

18 I also served as an early director of the California
19 Agricultural Leadership Program, and as a Trustee of the
20 California Four H Foundation.

21 I am honored to have been asked to serve when I
22 consider to be the premier university in the world, to help to
23 look after the interests of the people of the State of
24 California there, and I'm willing to serve if confirmed.

25 CHAIRMAN ROBERTI: Thank you very much, Mr. Leach.

26 Are there any questions of Mr. Leach?

27 Let me ask you a question, and that is, there has
28

1 been some concern at the University about the establishment in
2 some of the departments, such as Engineering, of establishing
3 unwritten quotas, especially as regards to Asian students.
4

5 Do you have any ideas along these lines of how we can
6 do the very difficult thing of making the University inclusive
7 of all people, and yet not impose quotas that would restrict
8 certain groups from achieving their full potential?

9 MR. LEACH: Well, Mr. Chairman, I'm new at this.
10 I've been recently appointed and attended three meetings, but I
11 have already learned that the University has the dual objective
12 of maintaining quality education and making their facilities
13 available to all who qualify academically.

14 I am totally opposed to quotas personally. I know
15 that the University's policy is opposed to that, and I'm sure
16 that the Legislature opposes quotas of any type.

17 I know that the University has an active affirmative
18 action program for students, for faculty, for administration,
19 and -- in order to be sure that all groups are given equal
20 opportunity, and the Board of Regents has a special committee
21 for affirmative action policies, so this is very much of
22 interest to the Regents.

23 And while I am not as well versed in it as I hope to
24 become, I think that assuring diversity in the University so
25 that it mirrors the make-up of our population is a very
26 important objective of the University.

27 CHAIRMAN ROBERTI: I don't have any other questions
28 of Mr. Leach.

1 Is there anyone in the audience who wishes to testify
2 either in support or in opposition? I see no one in the
3 audience.
4

5 Do I hear a motion?

6 SENATOR MELLO: Mr. Chairman, I know Mr. Leach. He's
7 from my district down there, and I know I plan to support him.

8 But without Senator Beverly here, I don't know what
9 -- if it's three Democrats --

10 CHAIRMAN ROBERTI: I don't know what happened to
11 Senator Beverly.

12 SENATOR MELLO: It's very complimentary to him that
13 three Democrats could --

14 SENATOR PETRIS: I talked to Senator Mello. He's
15 very high on Mr. Leach. I would be, too, if I were down there
16 and I knew him, but I'm trying to stay away from that.

17 I'm looking at this thing that says he'll serve 'til
18 the year 2001, and I've been concerned about appointments going
19 past the next Governor's term. Now this one's going past my
20 lifetime for sure.

21 CHAIRMAN ROBERTI: It is a Regent.

22 SENATOR PETRIS: I know, and that's why I wanted to
23 ask --

24 CHAIRMAN ROBERTI: There'll be plenty for the next
25 Governor, whoever she may be.

26 [Laughter.]

27 SENATOR PETRIS: Out of the 21 members on that Board,
28 how many has the current Governor appointed? It's probably

1 about 10, I would guess. Does anyone know for sure?

2 CHAIRMAN ROBERTI: Nancy, do you know that?

3 MR. LEACH: I believe that there are 18 appointed
4 positions. I think -- I can't tell you for sure, but I believe
5 that there are about five carry-overs, Senator.

6 So, I believe there's somewhere between 10 and 13
7 that were --

8 SENATOR PETRIS: Appointed by Governor Deukmejian.

9 MR. LEACH: -- appointed by the present
10 administration.

11 SENATOR PETRIS: So, I don't want to get into
12 qualifications and merit, because that's not the issue.

13 I'm just kind of jolted by the termination date, the
14 year 2001. I remember that movie, you know.

15 MR. LEACH: I hope it won't be beyond your lifetime,
16 Senator.

17 MS. MICHEL: Senator Petris, fourteen.

18 SENATOR PETRIS: Two-thirds.

19 CHAIRMAN ROBERTI: Senator Mello has moved
20 confirmation.

21 Senator Beverly is in Elections, and I expect him
22 back.

23 SENATOR MELLO: He'll be back. He's presenting a
24 bill.

25 I think, Mr. Chairman, I will move, but I want to
26 respond just briefly to Senator Petris.

27 I'm concerned about these long terms, also. If you
28

1 look historically, I think in the wisdom of the Constitution,
2 they wanted to make sure that the University of California be
3 free to carry out the policies and not be -- and that's why the
4 terms do go past the governor's term and past even Legislators'
5 terms. Maybe it's to create more independence, as you will
6 know, in representing --

7
8 SENATOR PETRIS: I support that. I opposed the
9 reduction from 16 to 12.

10 But I don't think any one governor should have that
11 many, especially in his last year. We're going five, six,
12 seven, eight, nine years into the future, and especially after
13 he's already had two-thirds of them. He's appointed 14 out of
14 21.

15 CHAIRMAN ROBERTI: Do the Regents always go with the
16 office or with the officer?

17 MS. MICHEL: With the office.

18 CHAIRMAN ROBERTI: It goes with the office.

19 So, when the appointment is --

20 MS. MICHEL: They are specific terms.

21 CHAIRMAN ROBERTI: The terms are specific.

22 SENATOR PETRIS: That's right.

23 CHAIRMAN ROBERTI: So, it's not a question in this
24 case of a governor being able to appoint so he can take
25 advantage in his last year of a legacy. These terms come up on
26 a fixed and regular basis.

27 SENATOR PETRIS: I understand that, and as I say,
28 when they had the big fight to reduce the terms from 16 to 12, I

1 preferred 16.

2 I just want to get a little more fair distribution
3 here, that's all.

4 You understand. Fourteen out of twenty-one. That's
5 why I don't want to discuss the merits, because I'm ensured
6 they're excellent.

7 MR. LEACH: Thank you.

8 CHAIRMAN ROBERTI: Senator Mello moves

9 Secretary, call the roll. If there aren't enough
10 votes, we'll put it on call.

11 SECRETARY WEBB: Senator Beverly. Senator Mello.

12 SENATOR MELLO: Aye.

13 SECRETARY WEBB: Senator Petris.

14 SENATOR PETRIS: No.

15 SECRETARY WEBB: Senator Craven. Senator Roberti.

16 CHAIRMAN ROBERTI: Aye.

17 SENATOR MELLO: Move a call.

18 CHAIRMAN ROBERTI: Senator Mello moves a call.

19 Without objection, such will be the order.

20 SENATOR MELLO: A call means, Mr. Leach, that we're
21 going to wait for Senator Beverly to come back.

22 CHAIRMAN ROBERTI: The next appointment is -- we'll
23 wait for Senator Beverly to be here -- the next appointment is
24 Theodore J. Saenger, Member of the Board of Trustees of the
25 California State University.

26 Assemblyman Vasconcellos is here.

27 Mr. Saenger, we will ask you what we ask all the
28

1 Governor's appointees, and that is what you feel your
2 qualifications are to assume this very important position.

3 MR. SAENGER: Mr. Chairman, Senators, as you know, I
4 have served as a Trustee of the California State University
5 system for a year and a half. During that period, I think I've
6 come to appreciate the depth and the complexity of problems
7 facing the public higher education system in the State of
8 California.

9
10 When I was here last, I affirmed to you my commitment
11 to that system based on my history and involvement with it, ever
12 since my undergraduate days in the U.C. system. And I have
13 recommitted my energies to making that system the very best in
14 the world, continuing its excellent record.

15 During the next period of time, if I'm confirmed, we
16 do face at CSU unprecedented growth. We will face unprecedented
17 change in faculty turnover due to retirement and that growth.
18 We are accommodating and will accommodate a changing student
19 body which is reflective of the diversity of the State of
20 California. Those are all important challenges which need to be
21 met.

22 I think what I can bring to the process, and I
23 believe I already have in the year and a half, but what I can
24 bring to the future process is an insistence as a Trustee that
25 the issues and the goals of the organization are very clearly
26 articulated, that they are in consonance with the Master Plan,
27 that the process by which those goals and issues are formulated
28 is one that's inclusive, that's based on consensus, that

1 considers inputs from the wide variety of constituents that need
2 to be considered. And then, when policies and decisions are
3 made, that those decisions and policies be carried out in a
4 quality kind of way.

5 I believe my interests, I believe my experience prior
6 to this, I believe my experience in this year and a half, will
7 all help me to do those things effectively and bring value to
8 the Trustees' deliberations.

9 I would stop and answer any questions you might have.

10 CHAIRMAN ROBERTI: Thank you very much.

11 How many members on the Board of Trustees are there?

12 MS. MICHEL: Twenty-four.

13 MR. SAENGER: That includes the Constitutional
14 officers, I think.

15 CHAIRMAN ROBERTI: Assemblyman Vasconcellos.

16 ASSEMBLYMAN VASCONCELLOS: Senators, I haven't ever
17 before come over here and made a pitch for somebody in
18 confirmation, and I'm pleased to be here on Ted Saenger's behalf
19 today, but mostly on behalf of CSU today. I've worked on higher
20 education since I've been here. Nick, you know that.

21 I met Ted when he was the head of the California
22 Division 2010 operation of the Economic Development Corporation,
23 which put together one of the most far reaching studies of the
24 future of the state from the business standpoint that was truly
25 a forward looking document, which you'll seldom find from
26 anybody. Then we did a joint venture at Asilomar a year and a
27 half ago of the CEDC and California Leadership, a nonprofit
28

1 which I formed four years ago, which is committed to developing
2 leadership in California that's diversified as to race,
3 ethnicity and gender, and inclusive and forward looking.
4

5 Since that time, Ted's come on our board. He is now
6 Chairman of that board. I worked with him. I shared a room
7 with him at Asilomar a couple nights then, and he's somebody
8 from the business sector who really has a sense of the public
9 sector, and the partnership, and a vision of the future, and
10 demographics that are changing.

11 On the Board of CSU, he's also CSU's person on CPEC,
12 I believe, and I have friends on both of those agencies who tell
13 me that he is somebody of integrity, of vision, commitment and
14 generosity.

15 I urge your confirmation.

16 CHAIRMAN ROBERTI: Thank you. That's a bold
17 endorsement and we appreciate it.

18 Is there any opposition in the audience? Seeing
19 none, do I here a motion?

20 SENATOR PETRIS: May I have a question.

21 CHAIRMAN ROBERTI: Senator Petris, excuse me, I
22 didn't ask for questions.

23 SENATOR PETRIS: Are you going to have time for this?

24 They say if you want to get a good person on the
25 board, pick a busy person. But I see here you're also on the
26 Board of Occidental College, San Francisco Theological Seminary,
27 the John Muir Medical Center. That's Contra Costa; isn't it?

28 MR. SAENGER: Yes, sir.

1 SENATOR PETRIS: Et cetera, et cetera. Are you going
2 to have time for it?

3 MR. SAENGER: I'm retired.

4 SENATOR PETRIS: I see.

5 [Laughter.]

6 SENATOR PETRIS: Second question, does this term go
7 into the next century?

8 MR. SAENGER: No, but it goes well into the 1990s. I
9 believe it's 1997.

10 SENATOR PETRIS: I wish you hadn't said that.

11 CHAIRMAN ROBERTI: Our Chief Executive Officer is a
12 graduate of Occidental College, so that perked our ears up.

13 SENATOR PETRIS: You've got an inside track here.

14 ASSEMBLYMAN VASCONCELLOS: I might also mention,
15 Senator Roberti, that the Faculty Association is in support of
16 the confirmation as well, and that's an uncommon --

17 SENATOR PETRIS: Yes, that speaks highly for him.

18 CHAIRMAN ROBERTI: Right.

19 SENATOR MELLO: On behalf of my Portuguese caucus
20 member here, I'll be happy to move confirmation.

21 CHAIRMAN ROBERTI: Senator Mello moves.

22 Secretary will call the roll.

23 SECRETARY WEBB: Senator Beverly.

24 SENATOR BEVERLY: Aye.

25 SECRETARY WEBB: Senator Mello.

26 SENATOR MELLO: Aye.

27 SECRETARY WEBB: Senator Petris.

28

1 SENATOR PETRIS: Aye.

2 SECRETARY WEBB: Senator Craven. Senator Roberti.

3 CHAIRMAN ROBERTI: Aye.

4 The vote is four to zero; confirmation is recommended
5 to the Floor.

6 Congratulations.

7 SENATOR PETRIS: May I lift the call on --

8 CHAIRMAN ROBERTI: Senator Petris lifts the call on
9 the confirmation of Howard Leach, Member of the Board of
10 Regents, University of California.

11 Secretary, call the roll.

12 SECRETARY WEBB: Senator Beverly.

13 SENATOR BEVERLY: Aye.

14 SENATOR PETRIS: Petris, no to aye.

15 CHAIRMAN ROBERTI: Petris, no to aye, so that makes
16 that unanimous. The vote is four to zero.

17 He figured twelve years was all right.

18 Four to zero, the confirmation is recommended to the
19 Floor.

20
21 [Thereupon this portion of the
22 Senate Rules Committee hearing
23 was terminated at approximately
24 5:20 P.M.]

25 -oo0oo--
26
27
28

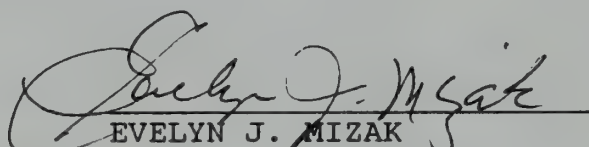
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of August, 1990.


EVELYN J. MIZAK
Shorthand Reporter



